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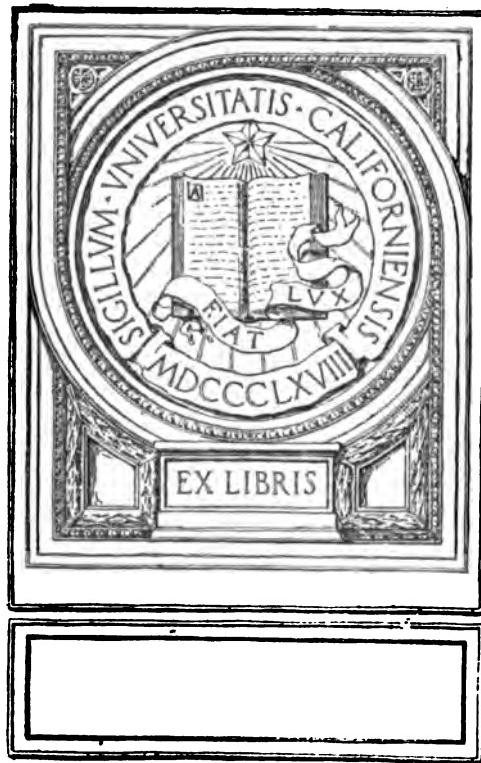
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WRITTEN IN THE CONTROVERSY RESPECTING THE  
LEGITIMACY OF  
A M I C I A,  
DAUGHTER OF  
HUGH CYVELIOK,  
EARL OF CHESTER.  
A.D. 1673 — 1679.  
BY SIR PETER LEYCESTER, BART., AND  
SIR THOMAS MAINWARING, BART.

*Reprinted from the Collection at Peover.*

EDITED, WITH AN  
INTRODUCTION,  
BY  
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PRINTED FOR THE CHETHAM SOCIETY.

M.DCCC.LXIX.



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AUSTRALIA

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TO AN  
A N S W E R  
To the DEFENCE of  
A M I C I A,  
Daughter of  
*H U G H C Y V E L I O K*  
E A R L o f *C h e s t e r.*

Wherein it is Proved,  
That the *R E A S O N S* Alleadged by  
**Sir Peter Leicester,**  
In his former *B o o k*, and also in his said  
*A n s w e r*, concerning the Illegitimacy  
of the said *Amicia*, are invalid,  
and of no weight at all.

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By Sir **T h o m a s M a i n w a r i n g** of **P e o v e r**  
in *C H E S H I R E*, Baronet.

---

*L o n d o n*, Printed for *S. Lowndes* over against  
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CALIFORNIA



T O

[Page 1.]

Sr PETER LEICESTER,  
*B A R O N E T.*

---

He Reasons which you and I have alledged for and against *Amicia*, being now made publick, all Persons may easily judge, whether, (as you believe) it was onely the zeal of my opinion touching her Legitimacy, which caufed me to endeavour to incline the world to concur with me therein, or that what I said was supported with just Grounds and Reasons; and I doubt not but those of our County that are understanding Persons, will as easily discern from some of your omissions, (although I forbear publickly to take notice of them) that it <sup>2</sup>was something else besides your great love to Truth (pretended by your alledging the old Rule of *Aristotle*,) which occasioned you thus to asperse your deceased Grandmother. But however things are, you have no reason to suspect any animosities betwixt us, I having in my first Book (as I hope I shall also do in this) endeavoured to avoid all expressions, which I did conceive might be offensive, and I am confident you have no just cause to be angry with me, for endeavouring to defend a deceased Grandmother whom I suppose to be very much injur'd by you.

[Page 2.]

I know not how far your memory will fail you therein, but I

O

[Page 3.]

am sure I have several times moved you (and particularly came once purposely to you to *Tabley*) to desire that you would be contented to deliver what you did conceit concerning *Amicia*, as an uncertainty onely, (as you had done that of *Roger*, Son of *Hugh Cyveliok*) and did at all those times assure you that if you would so do, and withal, express that some *Judges* and *He<sup>r</sup>alds* were of a different judgement from you, that I would never trouble you or the Reader with any Lines of mine. And the reason why I desired you thus to do, was, because the Reader would certainly conclude *Amicia* to be a Bastard, though no reasons were alledged, if he saw one who was descended of her, to declare her illegitimate in Print, and did not know that some Learned Men were of a different opinion; but I could not possibly prevail with you herein. And although what you alledge be true, *that there is no medium betwixt being a Bastard and Legitimate, but that a Man must absolutely be the one or the other*, yet, as to the Writer of an *History*, the case may be different; for he may be certain, that some, concerning whom he writes, may be Legitimate, and others may be Bastards, and accordingly he ought so to place them; but it is possible there may be some which he is uncertain, whether they be Bastards or not; and in that case the Historian ought to express it doubtfully, and not to take upon him absolutely to determine the point upon uncertain grounds.

[Page 4.]

\*As to your saying in the fourth page of your Answer, in the Margent, that *you apprehend not why I call Sir Ralph Mainwaring, Chief Justice of Chester, when in those Ages there was only one Judge at a time there.*

My reason wherefore I so did, was because I found that *Reginald Gray*, who was Judge of *Chester*, had taken unto him as an Associate, *Ralph Hegham*, in the thirteenth year of King *Edward the I.* as appears page 172. of your *Historical Antiquities*: as also, because I found in your said Book, before the time of Sir

*Ralph Mainwaring*, two Deeds of *Randle de Gernoniis*, (which seemed to imply, that there had been sometimes more Justices of *Chester* than one at a time,) the one of which as appears, page 128. was directed, *Constabulario, Dapifero, Baronibus, JUSTICIARIIS, &c.* and the other, as you may see, page 160. was directed, *Episcopo Cestriæ, Dapifero, Baronibus, JUSTICIARIIS, &c.* so that I hope, I am justifiable herein.

And though it was not usual till after ages, to have two Justices of *Chester* at one time, and that I have not yet found, that in the time of *Ralph Mainwaring*, there was any Justice of *Chester*, but the said *Ralph*, yet it being possible for the reasons aforesaid, that there might be more than one at a time; I did therefore call the said *Ralph*, Chief Justice, to shew if there were then two, that he was the chief of them, because he acted as Justice of *Chester* alone, as will thus appear from a Roll of antient Charts, called *Domesday*, remaining in the Castle of *Chester*, amongst the Records there.

[Page 5.]

*Leuca quæ fuit uxor Ranulphi de Kingesleigh veniens in pleno Com. Cestriæ coram Radulpho de Mainwaring tunc Justiciario Cestriæ & Baronibus, &c. quiet. clam. Richardo de Kingesleigh totam villam de Bertherton unde dotata fuit.*

And whereas you pretend page 4 and 5. of your Answer, (which is the onely example which you bring to prove what you there alledge) that *Geffrey de Dutton*, who made the Original Deed of *Nether Tabley* had this <sup>6</sup>word *Domino* sometimes prefixed to his Name, when he was a Witness, and yet was no Knight; and thence would inferre, that the word *Dominus* is no sure rule, to be always understood of a Knight. I shall before I give an answer unto what you say, transcribe the said Deed out of your *Historical Antiquities*, as I find it in the 355 page of your said Book.

[Page 6.]

*Sciant præsentes & futuri, quod ego Galfridus de Dutton dedi & concessi & hac præsenti Charta mea confirmavi Margaretæ filiæ meæ, pro homagio & servitio suo totam villam meam, quæ vocatur Parva-Tabley, sine ullo retenemento, cum Homagiis & Servitiis, cum Villenagiis, cum Boscis, cum Planis, cum Pratis, & Pascuis, cum Moris & Mariscis, cum Aquis & Molendinis, cum Viis & Semitis, cum omnibus locis prædictæ Villæ pertinentibus: Tenendum & habendum sibi Margaretæ, & Hæredibus suis, de me Galfrido, & Hæredibus meis, liberè quiete, & pacificè, cum omnibus libertatibus, & Aysamentiis prædictæ villæ pertinentibus: Faciendo inde mihi forinsecum servitium, quantum pertinet ad duas Bovatas terræ, unde triginta Bovatæ Terræ faciunt Feodium unius Militis, & faciendo servitium de Hauthoner quantum pertinet ad prædictam villam, pro omni seculari servitio, consuetudine & demanda, mihi & Hæredibus meis pertinente. Et ego Galfridus & Hæredes mei prædictam villam, ut prædictum est, prædictæ Margaretæ & hæred. suis, contra omnes homines & feminas in perpetuum warrantizabimus. Et ad majorem hujus rei securitatem huic præsenti scripto Sigillum apposui meum. Hiis Testibus, Domino Thoma de Dutton, Domino Galfrido de Dutton, Hugone de Lymme, Thoma fratre ejus, Ricardo de Aston, Rogero de Toft, Willielmo de Waleton, & multis aliis.*

[Page 7.]

[Page 8.]

Now this *Geffrey de Dutton*, being that person who did give *Little-Tabley*, (now called *Nether-Tabley*, and the principal Seat of your Family) unto *Margaret* his Daughter and Heir, who first was married to *Robert de Denbigh*, and afterwards to *Sir Nicholas Leicester*, and so brought *Nether-Tabley* unto the *Leisters*; A Man would think that you should be very well acquainted with all the Deeds that the said *Geffrey* made, which are in your custody, and <sup>8</sup>yet I doubt not but to make it appear, that you have run into several very gross errors, concerning that *Geffrey de Dutton*, who made the said Deed; For first, page 4 and 5. of your Answer, you tell us (which is but your own fancy) that the word *Dominus* was applied to the better sort of Gentlemen in those ages who were no Knights, and that in those elder Ages it was

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III.]

TO THE DEFENCE.

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sometimes prefixed, and oftner omitted even to the same Men; as *Domino Galfrido de Dutton*, who in the Original Chart of Nether-Tabley writes himself only—*Ego Galfridus de Dutton dedi, &c.* and several other Deeds you have seen of the same person (who you say was lineal Ancestor to Warburton of Arley) wherein you dare affirm among the Witneses subscribed, he hath five times and more the word *Dominus* omitted, for once that we find it prefixed to his name; and you are very confident, was not in him, as many others also, to be construed any more then Master Geffrey Dutton, and that he was no Knight;

To answer which, I shall thus far agree with you, That I believe the said <sup>9</sup>*Geffrey Dutton* (Son of *Geffrey*, Son of *Adam*) who made the said Deed of *Little or Nether Tabley* was no Knight, But I cannot imagine how it is possible that the said *Geffrey de Dutton* to that or any other Deeds of his own, could have his Name either with the word *domino*, or without, either five times for once, or at all, amongst the witnesses subscribed, unless you fancy, that he was a Witnes to his own Deeds, which is as gross a thing as I have known; But besides this, you run into another error, and when you do indeed find the word *dominus* prefixed to the name of *Geffrey de Dutton* as a Witnes to other Mens Deeds, you will needs have that *Dominus Galfridus de Dutton* to be him, who made the said Deed of *Nether Tabley*, whereas it was not he, but his Father, as I shall presently make very manifest; For it is clear that you have seen no deed made by any *Geffrey de Dutton*, in which the word *dominus* is used by the party himself, because, you tell us *p. 5 & 6.* (but erroneously also, as will anon appear) that the word *dominus* is never used in old Deeds by the party himself, <sup>10</sup>but where it is joyned with another word, as *Ego Willielmus Manwaring Dominus de Pever*, *Ego Robertus dominus Moaldie*; and also *p. 5.* you onely speak of his Name being subscribed as a Witnes, so that all the Proof which you have of a *Dominus Galfridus de Dutton* is from his being called so by other persons in other Mens Deeds:

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A REPLY TO AN ANSWER

[III.

Now, it appearing in your *Historical Antiquities*, page 250. that *Hugh de Dutton*, Son of *Hugh*, Son of *Hodard*, had a second Son named *Adam de Dutton*, (from whom you say the *Warburtons of Arley* are descended) and the said *Adam de Dutton* as appears in your said Book, page 384. having issue a Son owned by you to be Sir *Geffrey Dutton*, which Sir *Geffrey*, as you confess, page 354 & 355. had issue *Geffrey Dutton*, who made the said Deed of *Tabley*, the said Sir *Geffrey Dutton* the Father being then living, and a Witness to the said Deed, you when you find a *Dominus Galfridus de Dutton* to be a Witness to any Deed, will not own it (as you ought to do) to be Sir *Geffrey Dutton* Son of *Adam*, who indeed was a Knight, but you will have it to be *Geffrey Dutton*<sup>11</sup> the Grandson of *Adam*, who was no Knight; But though perhaps you may by such devises as these, impose upon some silly Readers, yet certainly no intelligent person will believe what you say concerning the same.

[Page 11.]

Also, I might here ask you, whether the word *Dominus* when it is prefixed to the name of a person, who is not a Clergyman, doth prove him certainly to be a Knight, or not? If it do, Why will not you call every Layman a Knight, that hath it so prefixed? and if it do not, Why do you in your *Historical Antiquities* p. 330 & 332. own Sir *Thomas Mainwaring* of *Warrinham*, upon the like proof, to be a Knight? And Why (as appears in the 8 Page of your *Answer* to my *Defence of Amicia*) did you fully intend to have called Ralph Mainwaring, Roger Mainwaring and William Mainwaring, all Knights, but that you know not by what fate it was forgotten? And, Why do you all along in your later Book acknowledge them to be Knights?

[Page 12.]

And whereas you say, p. 5 & 6. that, the word *Dominus* is never used in old Deeds, by the party himself, but when it is<sup>12</sup> joyned with another word, as Ego Willielmus Mainwaring *Dominus de Pever*, Ego Robertus Dominus Moaldiæ, but is only used when the party is subscribed as a witness; Though that be true for the most part, yet it doth not alwayes hold, as will appear by two Deeds of Sir *Thomas Mainwarings* of War-

*mincham*, which I have by me, sealed with two Barres in Green-wax, written about thus, *S. Tome le Maynwarig*; which Deeds you have seen, and are as followeth;

*Sciunt praesentes & futuri quod ego Dominus Thomas de Menylgaring dedi concessi & hac praesenti carta mea confirmavi Hamoni filio Johannis de Bruerio pro homagio & servitio suo quinque acras terrae in Villa de Cogishull, illas, scilicet, quas de me prius tenuit ad terminum, cum aumento perficiendi quinque acras integras sine impedimento, & sicut sepe fossato metis & bundis circueuntur & continentur, & cum omnibus aliis pertinentiis suis, & pro tribus marciis & dimid. argenti, quas mihi dedit pramanibus: Habendum & tenendum de dicto **Domino Thoma** & hæredibus suis, dicto Hamoni & hæredibus suis & assig.<sup>13</sup>natis, libere, quiete, integre, hæreditarie, imperpetuum, in bosco, in plano, in pratis, in pascuis, in viis, in semitis, in aquis, in moris, in omnibus communibus, & asyamentis Villæ de Cokishull ubique pertinentibus: Reddendo inde annuatim dicto **Domino Thome** & hæredibus suis duos solidos & sex denarios ad duos anni terminos, videlicet, ad Nativitatem Sancti Johannis Baptiste quindecem denarios, & ad festum Sancti Martini in yeme quindecem denarios pro omni servitio seculari, exactione & demanda mihi & hæredibus meis pertinentibus: Et ego vero dictus **Dominus Thomas** & hæredes mei dicto Hamoni & hæredibus suis & assignatis totas prædictas quinque acras terræ cum omnibus pertinentiis suis sicut prænotatum est contra omnes homines & fœminas warantizabimus & defendemus imperpetuum. In hujus rei testimonium huic praesenti carta sigillum meum apposui, Hiis Testibus, Hugone de Duram, Willielmo Bernard tunc Seneschallo domini Thomæ de Menylgaring, Richardo Starkye, Roberto de Wynninton, Ranulpho de Berthorton, Thoma de Queloc, Johanne de Merbury, Rogero clero, & aliis.*

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*<sup>14</sup> Sciunt praesentes & futuri quod ego Dominus Thomas de Menylgaring dedi concessi & hac praesenti carta mea confirmavi Roberto de Bexeckne pro homagio & servitio totam illam terram quam mercatus fuit de Hugone de Berdeney sicut sepe & fossato*

[Page 14.]

*circuitur & includitur & metis & bundis continetur cum omnibus pertinentiis suis: Habendum & tenendum de me & hæredibus meis & assignatis dicto Roberto & hæredibus suis & assignatis, libere, quiete, integre, hæreditarie, in pace, bene, in bosco, in plano, in aquis, in viis, in semitis, in pratis, in pasturis, cum housbold & haybold, & tacfre, de omnibus propriis porcis suis infra omnes metas de Cokishull, & cum omnibus aliis communibus & esyamentis prædictæ villæ spectantibus: Reddendo inde annuatim mihi & hæredibus meis & meis assignatis quindecem denarios argenti ad duos anni terminos, videlicet ad nativitatem sancti Johannis Baptiste septem denarios & obolum & ad festum sancti Martini in yeme septem denarios & obolum pro omnibus servitiis secularibus exactiōibus & demandis prædictæ terræ per<sup>15</sup> tinentibus: Et ego vero Dominus Thomas de Menilgaring & hæredes mei & assignati mei dicto Roberto & hæredibus suis & assignatis totam prædictam terram sicut sepe & fossato circuitur & includitur, & sicut prænotatum est contra omnes homines & faminas imperpetuum warrantizabimus & defendemus: Pro hac autem donatione concessione & cartæ meæ confirmatione dedit mihi dictus Robertus quatuor solidos argenti præmanibus: In cuius rei testimonium huic præsenti cartæ sigillum meum apposui: His testibus, Richardo Starkey, Willielmo Bernard tunc Seneschallo Domini Thomæ de Menilgaring, Johanne de Merbury, Hugone de eadem, Hugone filio Hamonis de Comberbach, Ad. de Aelon, Roberto de Burwys, Rogero Clerico, & aliis.*

• And as to what you say, page 8. of your Answer, that as the word Sir, is in common discourse applicable to persons of quality from the highest to the lowest in its larger notion, so Dominus is applicable to any Knight or Gentleman, as if you should say, Domine quæso, num hoc verum est quod dico, necne?

[Page 16.]      <sup>16</sup>I grant it to be true, but then as you observe, the word Sir, or the word Dominus must onely so be taken in its larger notion, but that is so far from weakening what I say, that it doth con-

firm it ; For though if I speak to one whose name is *Peter*, that is but a Gentleman, I may properly use the word *Sir* to him, yet I cannot properly joyn the word *Sir* to his name, and call him *Sir Peter*, unlesf the said perfon be either a Baronet or a Knight, and this is the case in these old Deeds, where the word *Dominus* is prefixed to the names of the said Knights.

Also, if the word *Dominus* do only signify *Master*, (as you would have it) What is the reason, that in some Deeds it is only put before the names of some of the witnesses, and not before the names of others ? although those other perfons to whose names it is not put, many times are Lords of several Manors, and persons of very great Estate.

As to what you alledge, page 6. of your *Answer to my defence of Amicia*, <sup>17</sup>that in the 27 page of my said *Defence*, Radulfus de Meidnilwaring *after his Daughter Bertrey was marriageable* is there named without his Title of *Dominus* ; You your self have answered that a little before, by confessing (though the word *Domino* is usufally set to the name of such a person when he is named a witness) that the word *Dominus* is never used by the party himself, but where it is joyned with another word, as *Ego Willielmus Mainwaring Dominus de Peover*, *Ego Rogerus Dominus Moaldiae*, which though for the most part it be very true, yet I have shewed that it doth not ever hold ; But instead of observing that you had given a full answser to this objection of your own, you strangely fancy, that I would possibly say, that that Deed was made before the said *Ralph* was Justice of *Chester* ; whereas in the 74 page of my said Book, I had told you, that the said Deed was so far from being made before the said *Ralph* was Justice of *Chester*, that it was made after he had parted with the said Office ; And thus you became guilty of a double levity, first, in making an objecti-<sup>18</sup>on, which you your self had answered but in the preceding page, and then in framing an answser thereto for me, directly contrary to what I had formerly said.

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[Page 18.]

And whereas you say, page 8. that *you had rather give to any, especially to my Family, more then is due, then less*; I could wish I had just cause to be of that opinion; For I am sure you have omitted in our Descent, not only *Ranulfus*, who is nominated in *Domesday Book*, but also *Richard Menilwaren* mentioned in your *Historical Antiquities*, page III. *Roger de Menilgarin*, and

\* Note. That page. 117. of your Historical Antiquities, you have placed Randle before William, contrary to what you have done Pa. 341. and contrary to Monasticon Anglicum. Par. 1. Pa. 985.

\* *William* and *Randle* his Sons, spoken of by you page 341. *Roger de Menilgarin* or *Mainwaring*, named by you page 362. Sir *Ralph Mainwaring* and Sir *Roger Mainwaring* his Son, both taken notice of by you pa. 330. and this upon a pretence, that they were Lords of *Warmincham*, whereas I am confident you will not deny but that the *Mainwarings* of *Warmincham*

[Page 19.] were also <sup>19</sup>owners of *Over-Peover* or the most part thereof, until Sir *Roger Mainwaring* gave *Peover* to his younger Son Sir *William Mainwaring*, and it was not long after, that the *Mainwarings* of *Peover* became Heirs male to those *Mainwarings* of *Warmincham*, Sir *Warine Mainwaring*, Son of Sir *Thomas*, Son of the said Sir *Roger*, dying without issue Male; Also I am sure you denied to do us right in one other particular, when you did it in the like case for another Family, which had not so clear proof for it as mine had.

As for your new quarrel, (page 9 of your Answer) with the Herald, for giving to Sir *Randle Mainwaring* my great Grandfather six *Barrulets*, as his most proper Coat, whereas you say, ever since the time of Sir *Roger Mainwaring*, as well the Heirs of the right Line, as also the *Mainwarings* of *Peover* (after they became next Heirs Male) have constantly born the two *barres*, for some hundreds of years; I might reply and tell you, that the *Mainwarings*, of *Peover* have not constantly given, *Argent*, two *Barres Gules*, since they became Heirs Male to the *Mainwarings* of *Warmincham*, as appears by my Deeds; Neither do I think that Mr. *Cambden* did look upon the *Six Barrulets*, as a Coat

most peculiar to us ; for, in his *Britannia* in his Description of the County of *Chester*, he names the *two Barres* as the Coat most proper to our Family, as appears by these words of his, when he writes of *Astbury Church*, viz. *Haec enim per pulchra est, cuius porticus Occidentalis ipsam Ecclesiam, quæ sane alta, sua altitudine adæquat, & pyramidem adjunctam habet. In cæmeterio duæ jacent sepulchrales Militum effigies, in quorum scutis sunt duæ directæ areolæ five Barrae. Verum cum coloribus suis destituantur non facile quis dixerit fuerintne ex Breretonis, Mainwaringis, vel de Venables, quæ clarissimæ sunt in vicinia familie, & ejusmodi Barras variantibus coloribus gentilitiis in clypeis gestant.*

I rather think that my Great Grandfather having a Fancy to that Coat of *Six Barrulets* more than to that of the *two Barres*, because the most antient of our Deeds were sealed therewith, that Mr. *Cambden* gave him liberty to bear either the one or the other, which I <sup>21</sup> see not but it might be done, being our Family had for several generations usually born the one, and the other had been born by our Ancestor, and had never been used by any other Family, and I am sure, though you be so captious with us, that you your self have of late years given a different Crest, from what had for a long time been born by your Predecessors, because you found a more antient Crest in some of your Seals : And whereas you instance in the great Suit betwixt *Scroop and Grosvenour* in the Marshals Court, under Richard the II. concerning the bearing of a Coat of Arms, whereto both challenged a right and propriety by usage, but no other way ; You thence rightly infer, that usage makes a right in such cases ; but when you say, that usage only makes a right ; you are mistaken therein, For (not to mention the case in hand, where a mans Ancestor hath born a Coat, which for sometime hath been laid aside, but never taken up by any other Family) a Man could then have no right to a Coat, which was given him by a King of Arms.

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<sup>22</sup> I am still of opinion, that you have branded several persons

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in your Book with Bastardy, without any proof thereof, but shall not yet concern my self for any (besides my own Ancestor) except such as you give me just occasion to take notice of; And as for *Geva* and *Richard Bacun's* Mother, the first of them is not yet by you proved to be a Bastard, and I shall certainly hereafter make it appear, that the second was no Daughter of *Hugh Cyveliok*, so that *Amicia* is like to receive no *blow* at all; And if they were both Bastards, it would be no prejudice to *Amicia*, because I have in my former Book fully proved, that the gift to *Geva* was not a Gift in *Free-Marriage*, (as that to *Amicia* was) and you do not pretend at all, that any such gift was made to the Mother of *Richard Bacun*.

And whereas you tell me *you believe that Geva and the wife of Bacun had never been spoken of, nor suspected, nor doubted of by me, had not the case of Amicia been concerned*; I can assure you

[Page 23.] <sup>23</sup>I should have been of the same opinion concerning them, if you had never mentioned *Amicia*; but if you had not pretended from their Cases, to raise some Arguments against the said *Amicia*, I should never have troubled my self about them, and therefore I forbear to tell you of all mistakes, except such as the case in hand doth give me just occasion to observe. And whereas you say, page 12. that *you think you shall make good what you have alledged, with as much certainty as the nature of the thing and times will admit.* And also page 27. that *Geva was certainly a Bastard, by as good proof as can possibly be expected in such a case;* You do thereby implictely confess, that you do not make those things appear with any certainty at all.

I have now done with what you have said concerning my *Epistle*, and shall now proceed to consider of your *Answer* to the Book it self; and because you do in several places, again say, what you have said heretofore, I hope the Reader will excuse me, if I be constrained sometimes to repeat the same <sup>24</sup>things, which I also have formerly said.

In the 14 and 15 pages, you do tell me that I said I would remind you of that which you had formerly been told, *viz.* Who those *Heralds* were that gave to *Mainwaring of Peover* the quartering of the Earl of *Chester's* Coat, in Queen *Elizabeth's* time, and withal do say, that *I never told you, till long time after that part of your Book was written*, which, perhaps may be true, because that part of your Book was written very long since, *viz.* in the year 1647. but I am sure I have often told you of them, and you have also often seen the *Pedigree* it self, under the hands of Mr. *Cambden*, and Mr. *Sampson Erdefwick*; the rest in that place is only the repeating of your former quarrel with them, for suffering us to quarter the Earl of *Chester's* Coat, but if we can really prove, that we are of the Half Blood, whatever you conceive of it, I suppose all indifferent persons will think it but meet, that we should have the like liberty that all others have in the like case, in these last ages of ours.

<sup>25</sup> What you say in the 16 and 17 pages, hath been some of it formerly said in your *Historical Antiquities*, and also in the 15 page of this your *Answer*, and there is nothing there that is new, but that you only alledge, that *as to my note of Dukes and Earls to have been antiently Judges of Chester, I should have distinguished the times, for that was not till the Reign of Richard the II. (who made Deputies to act in their stead) before which time there were no such great persons Judges there, nor from Henry the Sevenths time downwards*; But what necessity there was for me particularly to distinguish the times in which those great Dukes and Earls were Judges of *Chester*, I do not know; For I only instanced in that to shew, that the place of *Judge of Chester* was antiently a place of great repute, and though it was some time after the death of *John Scot*, before any such great persons were made Judges of *Chester*, by the Kings of *England*, and that in all the times of the Earls of *Chester*, before that Earldom was united to the Crown, there could not be any Dukes or Earls made <sup>26</sup> Judges there, because there were no such persons belonging to the then Earls (except *John Lacy* Constable of

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*Chester*, who was not made Earl of *Lincoln*, as appears in your *Historical Antiquities* page 270. till the 23 of November 1232. which was but four years and upwards before the death of *John Scot* the last of the said Earls) yet there were ever antiently persons of good quality that were Judges of *Chester*, and if it had not been always a place of great repute, the Kings of *England* would never have made such very great persons to have succeeded them therein.

As to what you alledge in the 18, 19, 20, and 21 pages of your *Answer*, I do not doubt (though you affirm it can never be proved) but that I have already in my former Book, given most persons satisfaction, that *Amicia* was of the Half-Blood to Earl *Randle*, by a former wife of Earl *Hugh*; And whereas you object, that it is more rational to imagine, that *Earl Hugh matching his only Daughter, which he had by a former Wife, would have married her to as considerable a person as was either pro-<sup>27</sup>vided by himself, or his Son for his younger Children by a second venter*; I do answer and say, That I am not certain whether *Amicia* was the only Daughter that Earl *Hugh* had by his former Wife; because, I know some that pretend they can tell of some other Daughter or Daughters which the said Earl *Hugh* had by his said Wife; but I do confess, I have never seen just proof of any but her; but supposing her to be the only Child by his first Wife; I have in my former Book, pa. 23, 24, and 25. shewed that there is no strength in this Argument of yours; And I may here further add, that if you will search for examples, you may find very many, where the elder Sisters, sometimes, because swayed by their affections, and sometimes for other reasons, have not been married to so great persons as the younger Sisters have been; neither can you tell what portions Earl *Hugh* gave to *Amicia*, or to any of his other Daughters: neither is there any necessity that the elder Sister, because by a former wife, must have as great a portion as a younger Sister by a <sup>28</sup>latter Wife; because, many times persons are not able to give so great portions in their younger days, as

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afterwards : and because, the Children of the living Wife are oftentimes better provided for, than those of the dead Wife ; and of this, I could if I pleased, instance in some that I know ; and in case the Father dye, and leave onely issue Female by a first, and a Son and issue Female by a latter wife (as in this case) there is great likelihood (besides the advantage that the Sisters by the latter wife would have by being Heirs at Law to their Brother, he dying without issue) that the Brother will naturally be more kind to those Sisters that are of the Whole-Blood, and about the same age, and bred up with him, than he will be to her that is but his Half-Sister, and much older then himself.

And whereas you say, pa. 18, and 19. that *the expectation of Earl Randle Blundevile's Sisters of the Whole Blood (which I conceive added to their fortunes, whereby they matched to so great persons) could not be much, being grounded upon great <sup>29</sup>uncertainties, since it could not be foreseen (when they married) that their Brother should dye without issue, who afterwards married two wives successively, purposely to have issue of his own Body, to inherit his own Lands* ; I do think if you consider it, you cannot in good earnest believe, that the faid Earl *Randle Blundevil's* four Sisters were married before the said Earl married his first wife, whatever they were when he married his second wife ; For, *Bertred* the Mother of *Randle Blundevil* being aged but twenty four years when her Husband *Earl Hugh* died, as appears, *Rot. de Dominabus pueris, &c. in Scacc. penes remem. R. Jub Tit. Linc. Rot. I.* and the faid *Randle*, as appears in your *Historical Antiquities*, page 146. being married to *Constance* the Widow of *Geffrey*, fourth Son of King *Henry the II.* and Daughter and Heir of *Conan Duke of little Brittain, and Earl of Richmond*, in the year 1187. at which time the said *Bertred* was but about Thirty years old ; Can any one think that all the five Children of the said *Bertred* were then married ?

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<sup>30</sup> And whereas you say, that it was I who informed you of

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the three eminent Judges, and four Heralds that were of opinion, that *Amicia* was Legitimate: If your meaning be, that I was the only person who informed you thereof, I must impute it to the weakness of your memory, which fails you in this particular; For, you had many times seen our *Pedigree*, attested by Mr. *Cambden* and Mr. *Sampson Erdeswick*, who did allow her to be a *Legitimate Daughter*, and several years since, two other Heralds, who are yet living, at *Chester* did declare to you in my hearing, that she could not be a Bastard, and the one of them then named to you a *Chief Justice* of the *Common Pleas*, and a *Lord Keeper* of the Great Seal of *England* (both now deceased) who did concur with them therein, and you have also seen an opinion of a Judge under his Hand, together, with Reasons for the same; and though you speak so slightly of the opinions of Judges and Heralds, *in comparing them to Hands got to a Petition or Certificate, and pretend it was without hearing the Reasons on the other side*; I very well know (though it seems you have forgotten it) that that hand which was obtained, was procured, because you seemed to desire to know his opinion in the case; And I also know that those two Heralds, who at *Chester* did declare their judgements against you, did then hear all the reasons that you could then alledge.

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As to what you say, pa. 22, 23, 24, 25, 26, and part of the 27, in all which you would willingly prove, that the Common-Law is now altered some other way than by Statute, you do but lose your labor, and can never prove the same; For, in that *Maxime* of the Law, where it is said, That *whatsoever was at the Common-Law, and is not ousted or taken away by any Statute, remaineth still*; the words *ousted or taken away*, must needs be taken conjunctively, and must necessarily bear this sense, *that the Common-Law still is the same in all points, as it was before, except where taken away by Statute*; and if those words should be taken otherwise, then, the meaning <sup>32</sup>would be this, *that that part of the Common-Law which doth remain, doth remain*, which would

be a very strange *Maxime*; And whereas you heretofore urged some places, to prove, that the Common-Law is alter'd at this day from what it was in former ages, long after the time of King *Henry the II.* which you now also urge again in the 24 page of your latter Book ; I must give you the same answer which I formerly did, *viz.* That those places do not prove that the Common-Law at this day doth vary from what it was in former ages, in any particular, but onely that it was taken to be otherways in those days, and that it was but just like some Cases in our *Reports*, which have at several times been adjudged directly contrary to each other ; but notwithstanding that, the Common-Law was still the same ; And that I might come as near you as I could ; I did then acknowledge that though the Common-Law was ever the same, where not alter'd by Parliament : yet in former ages, they did in some particulars, take the Law to be otherways than they now do ; And I did also ac<sup>33</sup>knowledge, that if you could prove, that they had done so formerly in this case of *Frank-Marriage*, that it would have taken off much of the strength of my Argument from the words *in libero Maritatio*, because, that antient Deeds and Grants (according to what my Lord *Coke* on *Littleton* says, fol. 8. b. at the bottom) are to be expounded as the Law was taken to be at the time of the Grant : Now these places which you alledge, do not prove a change of the Common-Law, in any particular, other than by Statute, but only that the Law was sometimes differently taken in one Age, from what it was in another Age ; for in your 24 page, where you cite *Coke upon Littleton*, fol. 34. *Secl. 39.* you do not there say, that my Lord *Coke*'s words were, That the Law was different in *Glanvile's* time in the particular you there mention, from what it is now ; but you say, that he saith that in antient times, as it appears by *Glanvile, lib. 6. cap. 1.* it was taken (that is, the Law was taken) that a Man could not have endowed his Wife, ad *Ostium Ecclesiæ*, of more than a third part, but of less <sup>34</sup>he might: but at this day the Law is taken, (as *Littleton* holdeth, which is) That a Man may Endow his Wife ad *Ostium Ecclesiæ* of his whole Land, or

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*of the half, or other less part*, which is the very same thing that I said ; And where you again cite *Coke upon Littleton*, fol. 8. a. towards the bottom, you bring him in, saying, that *of antient time the Heir was permitted to have an action of Debt upon a Bond made to his Ancestor and his Heir, but the Law is not so at this day* ; but my Lord *Coke* doth not say as you do, *viz.* That the Law is not so at this day, but that the Law is not so holden at this day ; so that he still avoids the expression of *the Law being changed*, (otherways than by Statute) although it was differently holden in several Ages ; And thus, as you may see *Coke upon Littleton*, fol. 21. b. in the Case of *Piers de Saltmarsh* and others, it was judged in King *Edward* the Thirds time, and in King *Edward* the Fourths time, That a Man might give Land to his Son in Frankmarriage, but in King *Henry* the Eighths time, it was holden otherways, the former Books being not remembred ; But <sup>35</sup> notwithstanding, that this point was judged thus differently, the Law was still the same, and all that can be said, is, that some of the Judges did not judge right, according to the Common-Law ; and indeed if this Rule of yours was true, that because the Judges in one Age did take the Common-Law to be otherways, than it was taken in former Ages, that therefore the Common-Law was changed : The Judges then could never do contrary to the Common-Law, For, when they had declared (though erroneously) that the Common-Law ought to be otherways taken, than it was formerly, the Common-Law by your Rule, would be thereupon changed, and what they did, would ever be legal, The absurdity whereof every one may easily discern.

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What you say page 27, 28, 29, 30, and 31. to all those Reasons which I did give, to shew that whensoever the word *Mulier* is used in the case of Frankmarriage, it shall by common-intendment be understood of a Woman that is of the *Kindred*, will, (I believe) <sup>36</sup>give no knowing person any satisfaction at all ; for though you pretend your self to be very pleasant, when you say

*you have seldom known (nor you believe any other) any such question as this, Whether Hugh Cyveliok had a former Wife, to be proved by argument of Scripture, or nicety of Law, which is meerly a question of History, yet certainly the understanding Reader, will easily perceive that this is but a shift, and will also discern, that I did not bring that place of Scripture to prove that *Hugh Cyveliok* had a former wife, but that I made use of it by way of answer, to take off what you had alledged, and I do not at all doubt, but that Text will fully satisfy, that all expressions which seem Universal, are not always to be expounded without any limitation at all; but as you would extend that expression of *Glanvill* too far, so you run to the other extream concerning this of *Deuteronomy* 14. 26. and would restrain these words, *or for whatsoever thy soul desireth*, only to those things there mentioned, viz. Oxen, Sheep, Wine, and strong Drink, which would be a *Tautologie*, and several times <sup>37</sup> in the same verse give them liberty to make use of Oxen, Sheep, Wine, or strong Drink, whereas undoubtedly the Jews at their said Feasts had also liberty to eat the Goat, the Hart, Roebuck, Fallow Deer, Wild Goat, Pigarg, Wild Ox, the Chamois, as also all clean Fowls, Fishes, and other *clean* meats whatsoever, allowed them by their Law; and therefore this expression being as universal as that of *Glanvill*, and yet being to be expounded, so as to agree with the Laws of that Kingdom, why should not this seeming universal expression of *Glanvill* be so expounded, as to agree with the Laws of our Kingdom? And if so, sure what I say is to the point in hand.*

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Also, If this Text of Scripture should be restrained as you would have it, it would not contradict, but confirm what I said; For, what expression can seem more universal than this, viz. *whatsoever thy soul desireth*, and yet you confess it ought not to be understood without some limitation, and indeed, you restrain it *more* than I do.

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<sup>38</sup> And though it be true, that Bastards both were and yet are capable of receiving Lands after they have gained a name by reputation, yet they are not capable of having Lands passed with them *in liberum maritagio*, though it be passed with them by the name of Daughter, without the addition of Bastard ; and though you pretend that *Amicia* had gained a name by reputation, yet you do not, nor cannot tell what it is, for certainly *Amicia* and *Daughter* are not any reputed names.

Neither do I put any argument about *Glanvil's* contradicting himself, as you put it, as will appear, pa. 34. and 35. of my former Book, so that you leave what I there say, wholly unanswered. Neither do I say, that the Lawyers of latter ages do expound the Law, that Lands cannot pass in Free-marriage with Bastards now, *ergo*, it was so taken in *Glanvil's* time ; but I have given you many reasons, why the Law was taken in the time of *Glanvill*, in the point of *Free-Marriage*, as it is taken now ; to which you give no other answer, but that you will leave it to wise Men to judge, who will take the <sup>39</sup>paines to scan them, whether they be pertinent ; And I do willingly appeal to all wise men, whether that be an Answer to those Eight Reasons, for if it be I am much mistaken therein.

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But what will you say, (though I did admit it to be so, because I would put the Case as hard as I could upon my self) if *Glanvil* by those words of his, *Lib. 7. cap. 1. Quilibet liber homo quandam partem terræ sua cum filia sua, vel cum aliqua alia qualibet muliere dare potest in Maritagium, sive habuerit haeredem, sive non, velit haeres vel non, imo & eo contradicente* did not say or mean that a man might give lands in *Free-marriage* with any woman whatsoever, but only that he might give lands with any woman in that kind of Marriage, which was not free ; For, if you observe him well, he doth not there say, that any man whatsoever can give Lands *in liberum maritagium* with any woman whatsoever, but only that it may be so given with any woman *in Maritagium* ; Now that *Maritagium* is two-fold, *Glanvil* himself

tells you, *Lib. 7. cap. 18.* where he sayes, *Maritagium autem, aliud nomi-<sup>40</sup>natur liberum, aliud servitio obnoxium; liberum dicitur Maritagium quando aliquis liber homo aliquam partem terræ suæ dat cum aliqua muliere alicui in Maritagium ita quod ab omni servitio terra illa sit quieta, & a se & hæredibus suis, versus capitalem dominum acquietanda, & in hac quidem libertate, ita stabit terra illa usque ad tertium hæredem nec interim tenebuntur hæredes inde facere aliquod homagium, post tertium vero hæredem, ad debitum servitium terra ipsa revertetur, & homagium inde capietur.* Many of which words of *Glanvil* you may also find cited by my Lord *Coke* on *Littleton*, fol. 21. b. Now if you well observe it, *Glanvil* doth not there say that a man may give Lands in liberum *Maritagium cum qualibet muliere*, but only in *Maritagium*; But when he speaks of *Free-marriage* he useth the expression *cum aliqua muliere*, with *some woman*, viz. one of the *Kindred* so that without doubt he using the same expression with Mr. *Braeton* who was the next Writer after him, he also understands it in the like manner, as the other did; But if Mr. *Glanvill's* expressions (*Lib. 7. cap. 1.*) had concerned <sup>41</sup>*Free-marriage*, yet I have formerly shewed, that the word *Mulier* in that case, could only have been understood of a woman of the *Kindred*: Also my Lord *Coke* upon *Littleton*, fol. 21. b. when he hath told you that one of the four things incident to a Frank-marriage is, that the Woman or Man that is the cause of the Gift, be *of the blood* of the *Donour*, not long after on the Margin of the same Page quotes *Glanvil*, *lib. 7. cap. 1.* (the place on which you build) which he would never have done, if that place had been contradictory to his opinion, and certainly, if *Glanvills* words in that place are to be understood as you would have them, they do contradict what my Lord *Coke* there sayes, unless the Law in that point was taken after one manner in *Glanvil's* time, and after another manner in my Lord *Coke's* time, which if it had been so, my Lord *Coke* had been concerned to have taken notice thereof, having no otherway to reconcile it with what he had said.

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[Page 42.] What you say, pag. 32 & 33. is not at all to the purpose ; For, you there tell us, that *Bastard Sons, bastard Daughters, bastard Brothers, &c. in all Settlements and Conveyances of these last antient Ages, are termed Bastards*, but you say that was never used in the Antient Ages ; But, this is only your bare saying without any proof at all, so that your word herein will not pass, unless you had shewed us several antient Settlements and Conveyances, in which, bastard Sons, bastard Daughters, bastard Brothers, &c. are named without the word *Bastard* joyned to them, which I am confident you cannot do, unless when very great persons are named, who by reason of their greatness, are usually excepted in such cases as those ; And indeed you do not only want proof to make good what you here say, but I have formerly brought proof of the contrary, from Sir *Henry Spelman*, who in his *Glossary* on the word *Bastardus*, fayes, *Quoties enim agitur de honore vel commodo filiorum, appellatione filiorum non comprehenduntur bastardi*. And as to what you affirm, that *Bastards be of the blood both now and in former ages, though the Law will not allow them so, because they now are esteemed in the eye of the Law quasi nullius filius* ; For if A. have a Bastard Son or Daughter, which is really his, they must needs be of his blood : for no Law can extinguish Nature ; though by common Law they are not now esteemed so ; There is no force in what you so say, Because, in this case Children are looked at, as they are in Law, and not as they are really, because, it cannot be known what they are really ; And therefore if A. have a bastard child which is really his, yet it shall not inherit, because it is in Law *nullius filius* ; and on the other side, If A. have a Wife who doth play false with him, and hath a Child begotten of her body by another man, yet this Child shall inherit, because it is in Law the Child of A. And whereas you also ask the Question, What if you say that the reason why in the Deeds of those elder Ages, they were called Daughters, without any addition of Bastard, whereby the party owned them to be of their blood, was, that the Lands passed in *libero maritagio* with such might descend to their heires ? For

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our Lawyers now tell us, that Bastards are capable of receiving Lands, after they have gained a Name by reputation; Why may not then Bastards, having gained the names of Daughters, receive a grant from their own Fathers, either in Frank-marriage or otherwayes?

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Your Question will be easily answered, because the consideration of the Gift in *Free-marriage* is the blood that is betwixt the *Donour*, and that *Donee* with whom the Land is given; But a Bastard is not *de sanguine patris* (*Dyer, Fol. 374. b.*) and the calling of any person *Daughter*, who is not so in Law, will not make her of the blood, for if that would serve, a Man might call any other Woman his Daughter, that is not so, and then give Lands with her in *Frank-marriage*: Besides, to what purpose should such tricks as these be used, which will not hold, when though a Man cannot give Lands in *Free-marriage* with his Bastard Daughter, yet there are other wayes, whereby any Man that pleases and hath a disposing power, may settle Lands on a Bastard Daughter and her heires: Also, if *Glonvills* words did prove, as you would pretend they do, To what purpose should men in those <sup>45</sup>ages, leave the word *Bastard* out of their Deeds of *Free-marriage* to their bastard Daughters, with design thereby to cause such lands to continue to them and their heirs, if such gifts might be made with any woman whatsoever; so that you never observe how finely you have argued here, against your self.

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Where you say, in the 34, 35, 36 and 37 Pages of your Book, that though you do not find Geva called a Bastard in express terms, yet you find it implied in an Author contemporary (meaning *Ordericus*) by certain and sure consequence, which you believe can never be fully answered; and for the fortifying of which, you pretend to give some reasons; Give me leave (since you give the occasion) again to say, what I have formerly said, viz. that though *Ordericus*, speaking of *Hugh Lupus* his death, doth add

these words, *Richardus autem pulcherrimus puer quem solum ex Ermentrude filia Hugonis de Claramonte genuit.* I am not yet satisfied, but that he might as well mean, that he was the only Son which Earl *Hugh*<sup>46</sup> had by *Ermentrude*, as that he was the only child that he had by her; For there is no necessity to take the word *solum* adverbially, neither is it marked as an Adverb in *Ordericus* his Book, though it be so in yours, and yet in his Book, Adverbs are usually marked; And though you alleadg that *Ordericus* doth not say *quem solum filium*, as *I interpret him*, but indefinitely, *quem solum ex Ermentrude genuit*, and so, whether *solum* be understood adverbially, or whether it be taken for a Noun, no more can be made of it in English than thus, *Richard a beautiful youth whom only Earl Hugh begot on Ermentrude, &c.* and so, whether we English it, whom only he begot, or whom he only begot, it retains the same sense, and shews that no other person, either Son or Daughter, was begotten on *Ermentrude* by Earl *Hugh*. You must give me leave to dissent from you herein; For, I conceive this expression of *quem solum genuit*, doth amount to as much as if he had said *quem solum filium genuit*, which if it do, then (notwithstanding the said expression) Earl *Hugh* might possibly have a Daughter or Daughters by the said<sup>47</sup> *Ermentrude*; For, to what Antecedent can the word *quem* so properly relate, as to the word *puer*? and if so, then *quem solum puerum* is as much as *quem solum filium*, and so doth not exclude him from having a Daughter or Daughters by the said *Ermentrude*; For, though the word *puer* be by some understood to signifie a Child of either Sex, as you also seem to take it in your *Historical Antiquities*, p. 113 & 114. (But misprinted 121 & 122.) Yet Mr. *Gouldman* in his *Dictionary* will tell you that it is a mistake, where on the word *puer* he thus writes, *Nonnullis habetur communis generis, sed male, ex Ovidiano illo Carmine, de Iphide puella in puerum mutata;*

*Dona puer solvit quæ fæmina voverat Iphis.*

And though you say, that *Geva could not be by any former Wife, because Earl Hugh had never any other Wife*; Yet that is more than either you or I know, for, there were many things done in those Ages which never came to our knowledges. And therefore I do not <sup>48</sup>take upon me to tell, whether *Geva* was by a former Wife than *Ermentrude*, or whether she was by *Ermentrude*, or whether she was a Bastard, But I say, she might be any of the three, for any thing that you have yet proved, and so long as it is uncertain what she was, you can bring no considerable Argument from her against *Amicia*; And if you could prove her a Bastard, it would signifie nothing, because the Deed made to her, is not a gift in *Frank-marriage* (as hath formerly and will hereafter appear.)

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And whereas you ask, p. 36. *Being I expound the words of Ordericus to be, that Earl Hugh had no other Son, What advantage it is to my purpose, unless Geva was that Daughter, and was legitimate?* I answer, That possibly *Geva* might be that Daughter, or possibly *Geva* might be by a former Wife, and that Daughter which Earl *Hugh* had by *Ermentrude*, might die before Earl *Richard*, so that nothing of certainty can be gathered from such Arguments as these.

As to what you say, p. 38, 39, 40 & 41. that *I am not to argue upon possibi-<sup>49</sup>lities, and because it might possibly be so, to say, that the Earldome of Chester was antiently entayled on the heires Males*; I Answer, That I do not positively aver any such thing, But let the case be how it will, and whethersoever *Geva* or *Randle de Meschines* was the heir general to *Richard Earl of Chester*, it seems to me that the said Earldome, did not come by descent, to the heir general, whoever that was; For, it clearly appears that *Geva* had it not, and *Randle de Meschines* had it not by descent; For, if what *James York* in his *Union of Honour*, p. 105. fayes, be true, *Randle de Meschines* was made Earl by Grant of King *Henry the First*; and *Ordericus* p. 876. tells us, that he restored to the said King *Henry*, all the Land which he had by his Wife the Widow of *Roger de Romara*, for

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the Earldom of *Chester*; which was more than was needful for him to do, if he had a good title thereto by descent.

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And whereas you ask me, *Why may I think that the King (though he gave it to Randle) did not give the honour and lands unto him, as in whom was the greatest right to have it?* and do say, that *to this I give no answer at all.* I may well tell you, that I could not give an Answer, until you did ask the Question, and you never asked the Question in your former Book; But the Answer which I shall now give to this Question, is, That I suppose, Kings in such cases do that, which to them seems most just, but yet Kings in these cases, as well as in others, are of different Judgments from one another very many times, and indeed the very same Princes will be sometimes of one mind, and sometimes of another mind, concerning the same thing; And thus we see, when *Randle Blundevile Earl of Chester* dyed, which was in the year 1232. King *Henry the Third* did suffer the four Sisters of the said Earl *Randle*, who were of the whole blood, to inherit that estate, and the said Earldome went to *John Scot* son of *David Earl of Huntingdon* in right of *Maud* his Mother, the eldest of the said four Sisters; But when the said *John Scot* dyed, which was in the year 1237, the said King *Henry the Third* would not suffer the said Earldome of *Chester* to <sup>51</sup>come to any of the Sons of any of the Sisters of the said *John Scot*, though he had before permitted it to come to the Son of the eldest Sister of the said *Randle Blundevile*.

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And whereas you say, that *if Geva had been but of the half-blood, she would by all probability have busied hard for so great an Estate in those Ages, before she had lost it.* I do wonder very much at what you say, Because, any Cosen that is of the whole blood (how many degrees soever the distance is) will inherit at Law, before a Brother or Sister that is but of the half-blood; And whereas you say, *I am come to an excellent way of arguing, by ifs, and ands, and possibilities, by which means Answers may be*

*made to any thing even to eternity.* I do not offer from those kinds of Arguments or Answers, to determine any thing certainly, but only make use of them to shew the uncertainty of several things which you urge; But, you pretend certainties from such kind of Arguments, and particularly in this case of *Amicia*: For, all the reasons which you alleadg against her would not <sup>52</sup>prove her to be a Bastard, if those Arguments that are brought on her behalf were all laid aside.

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In your Answer to my *Defence of Amicia*, p. 42 & 43. you again cavil with me, without any just caufe, and fay, *that the case that I did there put, comes as near to the case of Geva, as an Apple to an Oyster*, But whether it be so as you fay, let the Reader judge. In your *Historical Antiquities*, p. 136. (which words of yours are also in the 10 & 11 pages of my *Defence of Amicia*) you have these words, viz. *And howbeit many Earldomes have descended to the heires Males, and not to the heires general, yet in this case were no heires Male, but two Females, an Aunt legitimate, who had it, and a Sister not legitimate, and shew me a precedent whereever the heires of an Aunt inherited before the heires of a Sister, both legally born and no heires-male left, unless in case of forfeiture by Treason, or some other great cause to hinder the same.* From these words of yours, I did not offer to raife any cavil, by telling you, that though honours or lands may be given to any persons whatsoever, by <sup>53</sup>those who have power to dispose of the fame, that yet they cannot properly be faid to descend to any but to the next heires, and therefore in point of *descent*, it is impossible that any one that is further off, should be preferred before another that is nearer; Neither did I tell you, how you did name an *Aunt* legitimate, in stead of the *Son* of an *Aunt* legitimate that had it; But I supposing (as I think any other would have done from these words of yours) that your meaning was, that *Randle de Meschines* must needs have more right to succeed in that Earldom of *Chester* than *Geva* had, becaufe, the faid *Randle* did enjoy the fame, and that

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**you thought it to be very clear, that whensoever there were no heirs-Male left, if the honour went to any of the Kindred, the King did alwayes prefer that person who was next of blood to it, except in case of Treason, or the like, and did thereupon desire me to shew you a precedent to the contrary, if I so could, and you instancing in the Earldome, and not in the Lands, I did thereupon shew you where one that was a Baron by Writ, dyed**

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**without heir Male,<sup>54</sup> leaving two Sisters only, and the Baronry came to the Husband of the younger Sister, and not to the Husband of the elder Sister, it being the pleasure of the King to call Sir Hunt Bourcher, who had Marryed the younger Sister, to the Parliament, and not to call Sir Thomas Nevil, who had Marryed the elder Sister; And if this be not a like case to that of Geva and Earl Randle (if Geva was legitimate) I am still very much mistaken; And whereas you now demand of me, If Geva was legitimate, Why the Lands of Richard Earl of Chester did not come to her, whatever the Earldom did: Though I cannot give you the certain reason, because the thing was done so long since, yet I can shew you several possibilities why they might not; For, either it might be the will and pleasure of the then King, that Randle de Meschines should have the Estate as well as Earldome, and that Geva should have recompence made her some other way, (as the Sisters of John Scot Earl of Chester in the like case afterwards had) or perhaps she might be of the half-blood to Earl Richard,<sup>55</sup> and Randle de Meschines be heir at Law before her, or perhaps the said Earl Richard having a greater kindness for the said Earl Randle than he had for Geva, (there being sometimes great unkindnesse betwixt Brothers and Sisters) might give his Estate to the said Randle de Meschines.**

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Those Arguments of mine which you mention p. 44. and are pretended to be Answered by you, pag. 45, 46 & 47. remain yet in their greatest strength, and are not at all answered by you, nay, the one of them is so farr from being answered, that it is not understood by you, unlesfs you only pretend not to understand

it, because, you perceive you cannot give an answer to it, and I rather think that to be the truth of the case, Because you have not recited my Argument as I did express it ; For you recite it thus ; Because *Coke* upon *Littleton*, fo. 21. b. tells us that these words *in liberum Maritagium* are words of *Art*, and so are necessarily required : and there you break off abruptly ; Whereas I told you that the Deed which you alledged to be made <sup>56</sup>to *Geva* would not at all concern *Amicia*, if *Geva* was a bastard, because it was no gift in Frank-marriage, as that gift to *Amicia* was ; And for a proof thereof I told you, that my Lord *Coke* upon *Littleton* in the place aboveaid did tell you, that these words *in liberum maritagium* are such words of *Art*, and so necessarily required (in these kind of gifts) as they cannot be expressed by words equipollent, or amounting to as much ; And he also there gave you the reason, which was, that these words *in liberum Maritagium* did create an Estate of Inheritance, against the general Rule of the Law, and therefore the Law required, that it should be legally pursued ; And to explain this, he also said, that if a man give Lands to another with his Daughter, in connubio soluto ab omni servitio, &c. yet there passeth in this case but an Estate for life ; For although those words be the same in sense, as the words *in libero maritacio* be, yet being not the very same words, they do not create an Estate of Inheritance ; But you contrary to all this, would not believe my Lord *Coke*, if he should have said that the words *in libe-*<sup>57</sup>*ro conjugio* did make but an Estate for life, (which he hath indeed by consequence said) But you will have the words *liberum conjugium* to create an Estate of Inheritance, as well as the words *liberum maritacium* (which no man before you ever said) Whereas no words that are equipollent, or amounting to as much can do it, it being impossible to make an Estate in *Free-marriage*, if there be wanting either the word *liberum*, or the word *Maritacium*.

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Also, as the words *in libero conjugio* can make but an Estate for life, so it is also clear, that in your Deed of Earl *Randle* to

*Geva*, there was no more intended than an Estate for life, it running all along in the singular number *Et teneat bene & in pace, &c. ut melius & liberius tenuit*, And it is likely the Deed of Earl *Hugh* did run after the same manner, by that expression *sicuti Comes Hughes ei in libero conjugio dedit*, But I believe the *Baffets* did afterwards enjoy the said lands, though how, or by vertue of what Deed, I am not able to declare ; For, in *Monasticon Anglicum*,<sup>58</sup> Part I. p. 439, and in your *Historical Antiquities*, p. 113. (but misprinted 121.) I find *Geffrey Ridell* and *Ralph Basset* called the heires of the said *Geva*; Now if those persons were the heires of her body, and the aforesaid Deed a Gift in *Frank-marriage*, Why did not Earl *Randle* confirm or grant those lands to her heires, as well as to her, And if they were not the heirs of her body, she could not be a *bastard*, For, as my Lord *Coke* on *Littleton*, fol. 3. b. tells you, *A Bastard can have no heir but of his own body.*

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And whereas I brought another Argument to prove that this Gift of *Geva* could not be a Gift in *Frank-marriage*, Because my Lord *Coke* says, that one of the things incident to a *Frank-marriage* is, that the *Donees* shall hold freely of the *Donour* till the fourth degree be past, which cannot be in *Geva's* case, Because there was no *Donees*, but one *Donee* only, and the Estate could not continue until the Fourth degree was past, because it was only for *Geva's* life ; You tell me that my Lord *Coke* upon *Littleton*, fol. 21. b. ci.<sup>59</sup> teth *Peter Saltmarch's Case, and Fitz-Herbert de natura brevium*, fol. 172. *that lands may be given by a Man to his Son in Free-marriage, and why not to his Daughter alone in Free-marriage?* But I pray you, How can there be a Gift in *Free-marriage*, if there be no *Marriage* at all ? and, How can there be a *Marriage*, if the Man or Woman be *alone* ? But you misunderstand this place (as you do many others) For, my Lord *Coke*, if you observe him well, doth not there say, that such a Gift can be made with a *Man alone*, or with a *Woman alone*, But there tells you, *that a gift in free-marriage may be either to*

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*a Man with a woman, or as some have held, to a Woman with a Man*, and for proof thereof, cites *Peter Saltmarsh* his case, and *Fitz-Herbert*; And this is no more than what I said in the 49 Page of my former Book, where I also shewed you how *Bracton* did therewith accord; But there is none of them that faith as you do, That land may be given in *Frank-marriage* to a Man without a Woman, or to a Woman without a Man.

In your 48 & 49 Pages, you would willingly perswade the Reader that <sup>60</sup> *Earl Randle de Gernoniis Father to Earl Hugh Cyveliok was Marryed by Robert Earl of Gloucester unto Maude his Sister, thereby to draw him to the part of Queen Maude his Sister, about the very year 1139. before which time we find no mention in antient Historians of Randle's acting against King Stephen, but in that very year we do, and then by some of them stiled Son-in-law to the Earl of Gloucester.* But I pray you, Why is it not full as likely, that *before* that time, *Randle de Gernoniis* was Marryed to the Daughter of the said Earl of Gloucester, and thereby was the more easily drawn to that party, to which he stood so near related, as that, that match should be made *purposely* to draw him to that party? And how could you hear much of that Earl *Randle's* actings against King *Stephen*, before the year 1139? seeing *Gervasius a Benedictine Monke of Canterbury* (who lived in the Reign of King *John*) tells us, in his *Chronicles or Annalls*, col. 1345. l. 60. that it was in the year 1138, when *Robert Earl of Gloucester did begin to quarrel with the said King Stephen*.

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<sup>61</sup> And whereas you yet seem unsatisfied that Earl *Hugh* was of such an age as probably to have had another Wife before *Bertred*, and do now say, p. 49. if we reckon by utmost possibilities, that Earl *Hugh* could not possibly be above sixteen or seventeen years older than *Bertred*; I do very much wonder thereat, seeing I have formerly from the Argument which you used to prove it to be otherwayes, made it manifest, that he might possibly be several years above double her age, and that

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so clearly, that I am confident, no man besides your self, will offer to deny the same; For I then told you that whether the Marriage of *Robert Earl of Gloucester* with *Mabill Daughter and heir of Robert Fitz-Hamon* was according to *Selden* in the year 1109. or according to *Stow* in the year 1110. the said *Mabill* might have *Maude* her second Daughter in the year 1112, which *Maude* if she was Marryed to Earl *Randle de Gernoniis* in the year 1128, when she was sixteen years of age, might have her Son *Hugh Cyveliok* in the year 1129. which if true, the said Earl *Hugh* was <sup>62</sup>fifty two years old at his death, For he died in the year 1181. and if so, then he was four years above twice the age of *Bertred*, For she was but Twenty four years old when the said Earl *Hugh* died, as appears *Rot. de Dominabus pueris, &c.* in *Scacc. penes Remem. R. sub Tit. Linc. Rot. I.* And it is certain, that the said Earl *Hugh* was Earl of *Chester* about four years before his Wife *Bertred* was born, besides what age he was of, when his Father died, and his Daughter *Amicia* was Married in his life time, and none knows how many years before his death. And if the Marriage of the said *Robert Earl of Gloucester* with the said *Mabill* was in the year 1109. then he might possibly be Five years above double the age of his Wife *Bertred*; And this is the more likely to be true, Because, though Mr. *Selden* be a later Writer, than Mr. *Stow* is, yet Mr. *Selden* cites one that lived long before Mr. *Stow*, as will appear by the old English Rithmical Story, attributed to one *Robert of Gloucester*, and recited in the 647. *Page* of Mr. *Seldens* Titles of Honour.

[Page 63.] <sup>63</sup>In your *Answer*, pag. 50, 51, 52 & 53. you endeavor to weaken the Third and Fourth reasons which were brought as concurrent proof on the behalf of *Amicia*, by saying, that *Hugh Cyveliok's Wife was a witness to her Husband's Deed, which a Wife cannot now be, she being not capable to be a Witness, either for or against her Husband*, whereby you would insinuate a change of the Law in that particular from what it was formerly, and you also say, that if *Hugh Cyveliok had had a former Wife*,

*sure Raph Mainwaring would have called his Daughter after her, and not after the then Countess ; And you there make nothing of Roger Mainwaring's calling Randle Earl of Chester and Lincoln his Uncle in a Deed, nor of Henry de Audley's being a Witness to the Deeds of Randle Earl of Chester and Lincoln, and of Robert de Ferrars, (which later you say is far fetcht) nor of Raph Mainwarings and Roger Mainwarings being Witnesses to so many Deeds of those that were Earles of Chester in their times.*

¶ But to these things, I say, that the Law is still the same as it was formerly, in the particular by you here mentioned ; For, both antiently and at this day also, I know nothing that hinders, but that the Wife may subscribe as a Witness to a Deed which her Husband doth make, and though she neither antiently could, nor yet can be a witness for or against her Husband, yet there is this use of it, that if the Wife survive her Husband, and it come to be controverted amongst other parties, whether such a Deed was Sealed by him, or not, she in the time of her Widowhood, may be a good Witness for the proving of the same.

And as to the calling of Sir *Raph Mainwarings* Daughter by the name of *Bertred* after the present Countess, and not after the name of *Hugh Cyvelioks* first Wife ; That is no wonder at all, it being more ordinary to call Daughters after their Godmothers Names, than after the names of their own Grandmothers, and especially when the Godmothers are of great quality ; Now the said *Amicia*'s Daughter being ¶ called *Bertred* (which is a very unusual name) it is more than probable, (according to what you expressed to me under your hand in April 1664.) that *Bertred* the Countess was Godmother to the said *Bertred Mainwaring*, And if so, it is very unlikely that *Amicia* was illegitimate ; For Wives are seldom Godmothers to their Husbands Bastards, or to the Children of such Bastards.

Also, Sir *Raph Mainwaring* and Sir *Roger Mainwaring* and *Henry de Audley* the Son-in-law of the said Sir *Raph Mainwaring* being so often Witnesses to the Deeds of the Earls of

*Chester*, and to the Deeds of their very near Relations, doth certainly shew there was then a very great and constant intimacy betwixt the said Families.

And though you pretend that Sir *Raph Mainwaring* was very conversant with the Earle, because he was Judge, and therefore came so often to be a Witnes, and say, that *we may find the like number of Charters or more, to which Philip Orreby Judge of Chester was witness in like nature*; I conceive that [Page 66.] you are deceived therein, although <sup>66</sup>Philip Orreby was Judge of *Chester* perhaps longer than Sir *Raph Mainwaring* was; For I do believe that I can make it to appear by what Deeds I have, and what Deeds I have seen of others, that Sir *Raph Mainwaring* and his Son Sir *Roger Mainwaring* were witnesses to more Deeds of *Hugh Cyvelioks* and *Randle Blundevil* than any other persons of any one Family were; Add hereunto (which I have in my former Book mentioned) that Sir *Roger Mainwaring* in a Deed of his own calls *Randle Earl of Chester* and *Lincoln* his *Uncle*, and how I did there observe, that though the Writers of Histories, did sometimes give to Bastards, the name of Cosen, Brother, Uncle, Son, and Daughter, I did believe you could hardly find any one that you could certainly prove to be a Bastard, or the Son of a Bastard, that did presume in a Deed to call so great a person as the Earl of *Chester* was, his Brother or Uncle, unless he came to be a very great Person himself; And this is so true, that in the 53 Page you are forced to confess that such Precedents are scant, but yet you think you have found one, <sup>67</sup>viz. *Randle de Eſbury*, or *Aſbury*, who in a Deed mentioned in the *Addenda* of your *Historical Antiquities* is called, *the Earl of Chester's Nephew, and is put the last of all the witnesses, and was certainly but an ordinary Gentleman, nor Knight nor Lord*. But this Precedent will fail you, for two Reasons, *First*, Because you do as good as confess that you cannot prove him to be a Bastard, (and he might perhaps be a younger Brother, or Son of a younger Brother, and so not necessarily a Knight or a Lord) *And Secondly*, Because he doth not [Page 67.]

call himself the Earles Nephew, but is called so by others, and that is so far from contradicting, that it doth confirm what I said in my former *Book*; Also if you observe it, there were no Witnesses to the said Deed, besides the said *Randle de Astbury*, except *David de Malpas* (whom I conceive was *Baron of Malpas*) and *William* his Son.

And whereas you say, *you should be glad to find out the Extraction of the said Randle de Astbury, if he were not a Bastard.* Though it be perhaps impossible now to tell you his Extraction certainly, because he lived so long since, <sup>68</sup>and we only find him a witnes in one Deed, Yet I doubt not but to satisfie the Reader, that he and his Father and Mother might all be Legitimate, For, (not to say, that he might be a Son of some other Daughter of the said *Hugh Cyveliok* by his former Wife) he might possibly be the Son of *Roger*, Son of *Hugh Cyveliok*; And I know no great reason why the said *Roger* should by you be suspected to be a bastard, For, you only find him (as appears by your *Historical Antiquities*, p. 134. and in my First *Book*, p. 1.) mentioned as a *Witnes to a Deed of his Brother Randle's, to the Abbey of Saint Werburge*: So that you conceive him to be a bastard, Because neither he, nor any issue-Male of his, succeeded in the Earldome of *Chester* after the death of *Randle Blundevil*, Whereas the said *Roger* might be lawful, and be Father to this *Randle de Astbury*, and yet both he and the said *Randle de Astbury* might dye before the said *Randle de Blundevil*, For he lived very long, and was Earl of *Chester* above Fifty years; Also it is very strange, if *Amicia* was a Bastard, and the Father or <sup>69</sup>Mother of the said *Randle de Astbury* was also a Bastard, that those Bastards could find none to call their Children after, but the then *Countess*, and the then *Earl*, For the Daughter of *Amicia* was called *Bertred* after *Randle Blundevill's* Mother, and *Randle de Astbury* was of the same Name with the said *Earl*; But admitting that the said *Roger* was a Bastard, Why might not *Randle de Astbury* however be his Son? and then, What necessity (of what you say in your *Addenda*) of either finding out

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another Base Son, or another Base Daughter of the said *Hugh Cyveliok*; But you have been very willing to charge him with many Bastards both Sons and Daughters, although I find no great Reason to suspect that he had any at all unless *Paganus de Milton*, and it is possible in that case, you having neither the Deed, nor a Copy of the Deed by you, that you might take *Hugh Cyveliok* for *Hugh Lupus*, as well as in another Deed (as will anon appear) you did take *Randle Blundevil* for *Randle de Gernoniis*.

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<sup>70</sup>I am still of the same opinion that I was formerly of, *viz.* That *Richard Bacuns* Mother was not a Base Daughter of *Hugh Cyveliok*, nor any Daughter of his at all, but that she was daughter to *Randle Meschines*, and Sister to *Randle de Gernoniis*; And I think those reasons which I have given in my former Book do fully prove the same. And albeit you tell me in the 54, 55, and 56 pages of your latter Book, that *truly I am deceived in it*, yet I do not doubt but to satisfy all the world, that it is you (and not I) that are deceived therein; And whereas you say, *it is true (as I observe) that there was no such Archbishop of York called Will. nor Bishop of Chester, whose Christian name began with R. both living at one time, either in the time of Randle de Blundevill or Randle de Gernoniis.* I answer, I did make no such observation at all, but the contrary, For, I shewed you that in the time of *Randle de Gernoniis*; *William*, Sisters Son to King *Stephen*, was Archbishop of *York*, for a time, *viz.* about 1142 or 1143. (though he was afterwards ousted of it <sup>71</sup>again till 1152, or 1153.) and *Roger Clinton* was Bishop of *Coventry* and *Litchfield*, (which then was the same with the Bishop of *Chester*) from the year 1128, until the year 1148 or 1149. And I then also told you, that there was no *William*, Archbishop of *York* at any time during the life of *Randle Blundevill*, nor any man Bishop of *Chester*, whose Christian name began with *R.* except *Richard Peche*, who died about the time that *Hugh Cyveliok* died, *viz.* in 1182 (though some say, in

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1181. and some in 1183.) at which time *Randle Blundevill* could not be of age to Seal any kind of Deed, because *Bertred* the said *Randle's* Mother, was then but about Twenty five years old ; and this Argument you perceive to be so strong against you in this point, that you have no way to avoid it, but by giving a strange answer to it, which is, that *you do conceive the Roll from whence the Deed in Monasticon (Par. 2. Pa. 267.) is written, is mistaken in Will. and R. and miswrit therein from the Original Chart it self;* Which liberty if a Man might take, he might answer any thing in the world ; and your reason <sup>72</sup>for so saying is, *Because Richard Bacun in his said Deed doth say, that he had procured the warranty of Randle Earl of Chester his Uncle, for the ratifying of that Grant ; and the very next Deed following in the Roll, and transcribed in the Monasticon, is the Deed of Randle Earl of Chester, with Confirmation and Warranty accordingly, whereunto Roger Lacy, Constable of Cheshire is a witness, who only lived in the time of Randle Blundevill, and no other Earl of Chester, as I may see clearly proved among the Barons of Halton in your Book, nor is there any other Deed of Confirmation and Warranty to be found by any Earl, save this ; wherefore (you say) certainly it must be Randle Blundevil whom Richard Bacun calleth Uncle in his own Deed of the Foundation of the said Priory.* And you also say, *the Bishop of Chester (being also Bishop of Litchfield and Coventry at that time) he was not then subject to the jurisdiction of York but Canterbury ; and you also say, That there was no Archbishop of York called Will. nor Bishop of Chester, whose Christian name began with R. both living at one time, either in the time of Randle <sup>73</sup>Blundevill or Randle de Gernoniis, that you can find.*

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To which I answer, That it is not to be doubted, but that *Richard Bacun* did obtain the Warranty and Confirmation of that *Randle Earl of Chester*, who was his Uncle, and then living ; neither is it to be doubted, but that the Deed, to which *Roger* Constable of *Cheshire* was a witness, was the Deed of *Randle*

*Blundevil*, I having proved it to be so, in the 56 page of my former Book, because *Roger Constable of Cheshire* was living in the time of no other *Randle* but *Randle Blundevil*, so that you did not need to send me to see that clearly proved among the Barons of *Halton in your Book*; but the Deed of Confirmation of that Earl who was Uncle of *Richard Bacun*, is not in the *Monaſticon*, but was probably lost, as many other antient Deeds were: and that Deed of *Randle Blundevill*, which is there, is but another Deed of Confirmation, according to the mode of those times, when, it was usual to obtain such, from several Princes, several Generations one after <sup>74</sup>another; and for proof hereof, I did desire you to read *Monaſticon Anglicanum*, Par. 2 Pa. 24, and 25. where you might find King *Henry the I.* reciting and confirming what had been given to the Priory of *Hunten-dune*, and pa. 27. how King *Henry the III.* did the like, and yet there was a greater space betwixt King *Henry the I.* and King *Henry the III.* than there was betwixt *Randle de Gernoniis* and *Randle de Blundevil*; and very many others of the like nature, may be found, by those who will take the pains to make search in the several *Monaſticons*.

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Also, it is very strange, that you should fancy that the Roll, where the said Deed in *Monaſticon* was written, should be mistaken both in *Will.* and *R.* especially since the word *Will.* was the first word in the said Deed; neither is it a badge of any mistake in the said Deed, because the Archbishop of *York* is named in it, though the Bishop of *Chester* (being at that time the same with the Bishop of *Coventry* and *Litchfield*) was not then subject to the Jurisdiction of *York*, but *Canterbury*; For, <sup>75</sup>the Archbishop of *York* was not named upon that account, but, because some of the places mentioned in the said Deed, were within the Province and Diocese of *York*, as particularly *Roſington* was, it being within the *West-riding of Yorkshire*; but I suppose your principal reason why you suspect the *Roll* was mistaken is, because you say, *there was no such Archbishop of York*,

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*called Will. nor Bishop of Chester, whose Christian name began with R. both living at one time, either in the time of Randle Blundevill or Randle de Gernoniis, that you can find.* Which saying of yours seems very strange to me, but I believe all your doubt is about the *Will.* that was Archbishop of *York*, because Dr. Heylin (a late Writer) in his *Catalogue of Bishops* doth not mention the said *Williams* being chosen Archbishop immediately upon the death of *Thurstan*; for I am confident that you are well satisfied that *Roger Clinton* was Bishop of *Chester* (as appears by the Third Part of the *Monasticon*, page 218. as also by Bishop *Godwin*, *Isaacson*, Doctor *Heylin*, *Simeon Dunelmensis*, *Matt. Paris*, and many<sup>76</sup> other antient Authors) from about 1128. until about the year 1148. or 1149. which fell out to be in the time of *Randle de Gernoniis*, for he was Earl, (as appears in your Book) from about the year 1128. till about the year 1153. And I doubt not but to make it as clear, that a *William* was Archbishop of *York* in the time of the said *Randle de Gernoniis* and *Roger Clinton*, and though the said *William* was afterwards ousted, yet whilst he enjoyed that Archbishoprick, he was, and would in Deeds, and otherways, be owned as Archbishop of *York*;

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Now that a *William* was Archbishop of *York*, in the time of the said *Earl* and the said *Bishop*, I have already shewed you in my former Book, out of *Isaacson's Chronology*, and shall thus make it further to appear;

If you look into Bishop *Godwin's Catalogue* of the *Bishops of England*, printed at *London* 1615, page 581. in the life of *Henry Murdack*, Archbishop of *York*, you may find him saying thus.

1142. "King Stephen had a kinsman named William, (that Stephen was Son unto Emma his Sister, by Earl Herbert) a Man no less noble in Mind and Vertue, then Stock and Lineage. He being Treasurer of *York*, was now elected unto the Arch-

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bishoprick, and having obtained Consecration also, sent to *Rome* for his Pall. His speed there was not so good as he looked for ; by some Adversaries many exceptions were taken against him, whereby it came to pass, not only his Suit was put off, and stayed for that time, but also Proces awarded to admonish him to come thither in Person to answer the accusations laid against him. At his coming to *Rome*, he found his Adversaries many and Mighty. And among the rest it is remembred, that St. *Bernard*, then living, was very earnest against him. *Eugenius* the Pope, had been brought up in the Abbey of *Clareual* under St. *Bernard*, together with *Henry Murdac*, whom *Williams* adversaries had set up to be a Suiter for his Archbischoprick. The Pope being thus carried away with the per-<sup>78</sup>swasion of his old Acquaintance, and some shew of matter, was content to deprive *William*, and to place *Henry Murdac* in his room, whom he caused to be Consecrated presently, and sent him home into *England* with his Pall. King *Stephen* hearing this Newes, was much grieved with the disgrace of his Nephew, which all Men judged undeserved. Therefore He stood upon Termes with the new Arch-bishop, and required him to Swear unto Him fealty in some extraordinary manner ; and when he denied, easily took occasion of displeasure against him. The Townsmen of *York* that loved *William* exceedingly for his Gentlenes and Vertuous behaviour amongst them ; hearing how the King was affected ; refused to receive *Murdac* into their City. For this resistance he suspended them : which notwithstanding, *Eustach* the King's Son, commanded Service to be said as at all other times was accustomed. By means hereof, as also by reason that the King's Officers were very terrible and heavy enemies unto all that had laboured for the Deprivation of *William* : Seditions and Tu-<sup>79</sup>mults were daily raised in the City, amongst which a certain Archdeacon, a Friend of the Archbishop, was slain. Two or three years these stirs continued, till at last, the Kings wrath (by means) being appeased, *York-men* were content to receive their Archbishop peaceably. He governed very austereley the

space of ten years, dyed Octob. 14. 1153. at *Sherborne*, and was buried in his Cathedral Church. And when *Bishop Godwin* hath thus said, he presently afterwards tells you, how the said *William* (there called *Saint William*) after the death of *Henry Murdac* was again restored to the said Archbischoprick.

Also, if you look in *John Brompton's Chronicon*, col. 1028. l. 63. in the life of *King Stephen*, you may find him thus saying;

*Dicto autem Thurstino Eboracensi Archiepiscopo Monasterii Fontanensis aliorumque octo fundatore, ut dictum est, decedente* (and he dyed, sayes the said *Brompton*, col. 1028. l. 25. in the year 1140. with which *Bishop Godwin* doth <sup>so</sup> accord) *Singuli Ecclesiae Eboracensis Canonici, beatum Willielmum ejusdem Ecclesiae Thesaurarium preferunt, tam pro honestate morum, quam excellentia meritorum. Iste namque Willielmus ex spectabili propria Regis Stephani ortus, præclaris natalium titulis fuerat insignitus; erat enim filius potentissimi viri Comitis Herberti. Qui quamvis post decepsum dicti Archiepiscopi Thurstani, ad sedem Eboracensem electus fuerat; invidia tamen & impetuosus amor dominandi quemdam ejusdem Ecclesiae Archilevitam adeo in regionem dissimilitudinis traxerant, ut inter eligentes discidium excitavit, ipsum Willielmum a seniori parte electum impediens licet de ejus electione clerus & populus acclamassent laudum præconia. Suspenditur igitur causa ad Apostolicæ sedis examen provocata.*

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See also the said *Brompton* to the same purpose, *Col. 1041. l. 10.*

Also *Roger Hoveden* who lived in the time of King *Henry the Second*, King *Richard the First*, and King *John*; in the First Part of his *Annals*, Printed <sup>81</sup> at *Frankfort*, 1601. *Page 490. l. 51.* writes thus of the Restitution of the said *William*, *eodem anno obiit Henricus Eboracensis Archiepiscopus, quo defuncto, Willielmus Archiepiscopus, quem Papa Eugenius suspenderat, Romam profectus est, & invenit gratiam apud Anastasium Papam, &*

[Page 81.]

*redditus est ei Archicopiscopatus Eboracensis.* And I think it is not to be doubted, though I have not yet found the place, but that the said *Hoveden* doth speak of his being chosen after the death of *Thurstan*, because *Iсааkson* in his *Chronology*, cites *Hoveden* for what he there sayes, but he names not the Page.

Also, *Thomas Stubbs* (a Dominican) writing of the Archbishops of *York*, col. 1721. l. 15. thus sayes,

[Page 82.]

*Viceffimus nonus successit in Archiepiscopatum Eboracensis ecclesiae Henricus Murdak Cisterciensis ordinis Monachus ac professor probatissimus, vir magnae sanctitatis & abstinentiae laudabilis. Defuncto namque, ut praemittitur, Thurstino Eboracensi Archiepiscopo, convocatisque ad electionem pontificis Canonicis ecclesiae Eboracensis, Willielmus ejusdem Ecclesiae Thesaurariis & Canonicus exigentibus suis meritis a Majori & seniore parte in Archiepiscopum est electus. Erat enim strenuissimi Comitis Herberti filius ex Emma sorore Regis Anglorum Stephani progenitus. Vir quidem genere nobilis sed morum excellentia & vita mundissima incomparabiliter insignis. Interea vero Osbertus archidiaconus Eboracensis invidiae stimulo agitatus, facta inter eligentes dissensione, confirmationem ipsius electi licet ab omnibus dignus haberetur pertinaciter impedivit: suspenso igitur negotio partibusque coram Romano pontifice super hujus electionis discussione personaliter vocatis, idem Willielmus persequentibus illum adversariis suis & injusitate accusantibus consecrationis gratiam minime potuit optimere. Lite ergo in curia Romana sub Papa Innocentio secundo, Celestino secundo, & Lucio secundo per annos quinque & amplius debito processu currente, nichil inventum est quod ejus consecrationem deberet elongare. Verum summus Pastor Eugenius Cisterciensis ordinis Monachus anno Dominicæ incarnationis M. C. xlvi. in Papam consecratus electionem dicti Willielmi non ratione personalis in habilitatis, ymmo pro libito sue voluntatis casserit, &c. And there he also after speaks of the Restauration of the said *William* to the said Archbishoprick: so that it seems by this Author that the said *William* held the said Archbishoprick upon his first*

[Page 83.]

election, till after the deaths of Pope *Innocent* the Second, Pope *Celestine* the Second, and Pope *Lucius* the Second, *viz.* till about the year 1146. but was then ousted by Pope *Eugenius*, and restored again by Pope *Anastasius*, after the death of *Henry Murdac* about the year 1153.

Also *Gulielmus Neubricensis*, who lived in the Raignes of King *Richard* the First, and King *John*, page 368. l. 10. thus writes,

*Venerabili Tristino defuncto, Eboracensis Ecclesiæ Pontificatum suscepit Gulielmus ejusdem Ecclesiæ Thesaurarius, vir plane secundum carnem nobilis, & morum ingenua lenitate amabilis. Qui cum ad sedem Apostolicam responsales idoneos propetendo solemniter pallio direxisset: emergentibus adversariis & multa contra eum proponentibus negatum est. Tussusque ad eandem sedem in propria persona accedere & pro senectipso<sup>84</sup> tanquam ætatem habens allegare: causis tamen ingravescientibus atque invalescentibus adversariis, piæ quoque memorie Papa Eugenio contra eum, five per veritatem, five per surreptionem implacabiliter irritato depositus est, &c.*

[Page 84.]

So also *Gervasius* a Benedictine Monk of *Canterbury*, who lived in the time of King *John*, Col. 1357. l. 52. in the year 1142. thus sayes,

*Rex autem Stephanus dedit Archiepiscopatum Eboracensis ecclesiæ cuidem clero nomine Willielmo, quibusdam clericis ejusdem Ecclesiæ consentientibus, aliis vero ut audebant reclamantibus, unde factum est ut cum Theodbaldus Cantuariensis archiepiscopus sic factæ non consentiret electioni, Henricus frater Regis Wintoniensis episcopus apostolicae sedis legatus, præsumptuosa semper magnanimitate famam colligens, prædictum electum apud Wintoniam consecraret. Abiit itaque novus sacratus Eboracum, & vix duobus annis sedit in pace.*

Also, *Radulfus de Diceto*, who was Dean of *Pauls*, and lived in the time of<sup>85</sup> King *John*, Col. 508. l. 11. thus writes, *Thurstino Eboracensi archiepiscopo successit Willielmus.*

[Page 85.]

Also, *Matt. Paris* (who lived in the time of King *Henry the Third*) in his *Greater History* put out by Doctor *Watts*, *Page 78.* fayes thus in the year 1139. *Tunc defuncto Turstano Eboracensi Archiepiscopo, Willielmus ejusdem Ecclesiae Thesaurarius successorit.*

Also, *Simeon Dunelmensis*, a Benedictine Monk, who lived in the Reign of King *Stephen*, and in the time of the said *William*, *Col. 79. l. 39.* speaking of the Archbishops of *York*, thus fayes; *Post Oswaldum isti sibi ordine successerunt, Aldulfus, Vulstanus, Eelfricus, Kinsius, Aldredus, Thomas, Girardus, Thomas, Turstinus, Willielmus, Henricus, Rogerus;* There placing the aforesaid *William* before *Henry Murdac.*

[Page 86.]

And *John Prior of Hagulstald*, in his Continuation of the History of the said *Simeon*, *Col. 268. l. 41.* thus writes; *Anno M.C. xlii. Post mortem Turstini archiepiscopi clerici Eboracenses secundum desideria cordis sui varia<sup>86</sup> & vaga sententia circumacti fuerant toto anno super electione facienda. Elegerant autem persuadente legato Henrico Wintoniæ nepotem Regis Stephani. Henricum de Coilli. Qui quia præfuit abbatia Kadomenſi, noluit dominus apostolicus eum præfici archiepiscopatui nisi renunciaret priori honori. Mensē Januario iterum de electione traclantes, in personam Willielmi Thesaurarii plurimi consenserunt.* And presently after, *l. 60.* further fayes, *Perductum itaque electum ad Lincolniam rex libenter suscepit, & in terris & possessionibus Eboracensibus confirmavit.*

Now though a lesser number of Authors might have served to prove that there was a *William* Archbishop of *York*, living in the time both of *Randle de Geroniis* and *Roger Clinton*, yet I thought fit to cite all these, to let the world see that it was nothing else, which made you that you could not find it to be so, but because you would not find it to be so; For, I know, you have most (if not all) of the said Authors, and if you would have made search, you might easily have found what is here said.

[Page 87.]

<sup>87</sup> But besides what is here alleadged, if you had but observed those Deeds of *Richard Bacun* and *Randle Blundevil* which are

mentioned *Monasticon Anglicanum, Part 2.* Page 267 & 268. and the Deeds of *Randle de Gernoniis* that are in your own *Historical Antiquities*, you would easily have known that the said *Richard Bacun* did live in the time of the said *Randle de Gernoniis*; For to the said Deed of *Richard Bacun, Hugo Wac, Willielmus Constabularius de Donington, Thurstanus Banaster, Willielmus Bacoun, Robertus Bacoun, Willielmus de Colevile, Richardus Pincerna, Willielmus de Binulle, Galfridus Dispensarius, Willielmus Capellanus and Johannes Capellanus* are Witnesses: and to the said Deed of *Randle Blundevil, Rogerus Constabularius Cestriæ, Rogerus de Montealto Seneschallus Cestriæ, Simon de Kyma, Thomas Dispensarius, Simon de Thochet, Willielmus de Hardreshulle, Hugo de Neville, Henricus de Longo Campo, Philippus de Horreby, Sampson Prior de Trentham, and Thomas Clericus* are witnesses.

Now as it would appear probable <sup>88</sup>(if there were nothing else in the case) that this Deed of *Richard Bacun* was not made in the time of *Randle Blundevil*, because there is not any one person a witness to the said Deed of *Richard Bacun*, who was a witness to the said Deed of *Randle Blundevil* (or to any other Deed of his, that I can find) So it certainly appears from your *Historical Antiquities*, that those who are witnesses to *Richard Bacuns* said Deed, did live in the time of Earl *Randle de Gernoniis*, and not in the time of *Randle Blundevil*; For, as you may there see, Page 126 & 127. in the Deed made by *Henry Dukē of Normandy*, to the said *Randle de Gernoniis*, the aforesaid *Hugh Wac*, and *Richard Pincerna* were then witnesses on the behalf of the said *Randle*, also Page 128. to one Deed of the said *Randle*, the said *William Colevile* was a witness, and to another of the said *Randle's* Deeds the said *Willielmus Capellanus* and *Richardus Pincerna* were witnesses, and Page 160 & 161. to another Deed of the said *Randle de Gernoniis* the said *Thurstan Banaster, Richard Pincerna* and *William the Chaplain* were witnesses; <sup>89</sup>and so also the said *Richard Pincerna, Thurstanus Banaster*, and *Willielmus Capellanus* were witnesses to another Deed of the

[Page 88.]

[Page 89.]

said *Randle de Gernoniis* concerning *Neither-Whitley*, mentioned by you, *Page* 387. Though you there run upon a mistake, and say that *Randle Blundevil* made that Deed, which cannot be, Because those witnesses (as appears before) did live in the time of *Randle de Gernoniis*, and not in the time of the said *Randle Blundevil*, they being no witnesses at any time to any Deed of *Randle Blundevils* that I can find, although he was Earl of *Chester* above fifty years, so that nothing can possibly be more clear than this is.

As to the word *asperfed* which you fault me for using, I do not apprehend that it signifies a malicious seeking to throw dirt in another's face unjustly ; For, to asperse, properly signifies but to *besprinkle*, with which, malice will seldom rest satisfied : and I will do you this right, to declare that I believe it is not malice, but a desire to divulge your supposed new Discovery, which occasioned you thus to do.

[Page 90.]     <sup>90</sup>That way of Arguing which you use in the 57 *Page* is very odd ; For, Because you suppose the *Respondent* will deny your *Minor*, you would have him give over answering, and turn *Opponent*, and so endeavour to disprove what you ought to prove ; But what you say, *Page* 58. that you have proved *Amicia to be a Bastard, unless Hugh Cybelok had a former Wife*, and also *Page* 59. *that if he had no other Wife but Bertred, and she no Daughter to Bertred, then certainly if she be a Daughter and so called, she must needs be a Bastard*, is undoubtedly true ; For *Amicia must needs be a bastard, unless she was legitimate*.

You grant in your 59 *Page*, *That my proving Amicia to be called a daughter so long since, she ought to be presumed legitimate, till the contrary appear* ; But why therefore do not you presume her so to be ? And though

you pretend there are many strong reasons to the contrary, yet I have shewed the invalidity of them all, and therefore what I have formerly <sup>91</sup> said stands good, and is to the point, *viz.* That the proving that she was not by *Bertred*, does not prove that she was a bastard, but onely proves that she was either a bastard, or by a former wife.

[Page 91.]

And as to what you alleadg, *Page 60.* that, *though the Law allowes not this in pleadings, what hinders but Bastardy may be proved by History or Argumentation after the parties death?* As, suppose in a Register-Book you find such a Bastard Christened one hundred yeares ago, *may not you justly call that person a bastard, whom you find so Registered?* I do answer and say, That even in that case, though it be good proof, that there was then a Bastard of that name, yet if in any Deed (or otherwayes) in the same Age you find one of that name, you are not to be too positive that that Man was that Bastard, because, there might be more persons than one of the same Name, whose Fathers might also be of the same Name each with other; and though these mistakes might easily be cleared by the party concerned whilst he was alive, yet it may be difficult sometimes to do it after he is dead: And that is (as I suppose) one reason why the Law gives no liberty to prove Bastardy against any Man after his death. But the cases of the children of *John of Gaunt* by *Katherine Swynford* are not like to this case, For you certainly know that they were born Bastards, but afterwards legitimated; and I think, after their legitimation, they might have had the same remedies against any that did call them Bastards, that persons lawfully born might have had.

[Page 92.]

Whereas I tell you out of Sir *Henry Spelman*, that in cases of honor and profit (by the customes of *Normandy*) *appellatione filiorum non comprehenduntur bastardi;* You answere and say; *that in other cases, and formerly by the appellation of sons, bastards were comprehended, and that this makes directly against me;*

[Page 93.]

But how this makes against me, in what cases soever bastards were formerly comprehended by the appellation of Sons and Daughters, if they were not comprehended in cases of *honour* and *profit*, I cannot tell, seeing that *Amicia* is cal-<sup>93</sup>led a Daughter, and that in a case of so great *profit*, that you will needs have it to be her whole Portion.

And whereas you mention the next words of *Spelman*, viz. that *the ancient Northern people admitted bastards to succeed in their inheritance; and that William the Conquerour was not ashamed of that title, who began his Letter to Alan Earl of Little-Britaine as he did many others, Ego Willielmus cognomento Bastardus.*

I do not know how you can apply those expressions to the case in hand, and if you could, they would make against you; For, when Bastard children were so much esteemed, as to be admitted to succeed in the inheritance, then certainly illegitimate Daughters would have great Portions as well as those that were legitimate, And why should not *Amicia*, if she was a Bastard, be so called, as well as *Paganus* was? (who, as you say, was the Son of *Hugh Cyveliok*) Or why should *Hugh Cyveliok* himself, be more ashamed to call her so, than *William the Conqueror* was to stile himself a Bastard?

[Page 94.]

<sup>94</sup> What else you have said, *Page 61, 62 & 63.* hath been said over and over again by you, and hath formerly received a full Answer.

In the *64 & 65 Pages* you recite and endeavour to fortifie an Argument of mine, which I brought not as a good Argument, but compared it to one of yours, to shew the invalidity thereof; neither did I at all doubt, but that *William, Randle and Wydo* (Sons of the aforesaid *Roger Mainwaring*) were all legitimate, it being good proof thereof, that in so antient a Record, they are all three called *Sons of the said Roger*; But I shewed you by

the Rule by which you went *viz.* that none should be believed lawfull, unless we could directly and in *terminis* prove their Fathers to be married, that the said *William, Randle, and Wido*, and most persons that lived in the First and Second Centuries might be concluded to be Bastards; And though you tell me, *that I here argue well* (which must needs be, because this Argument of mine is so like to yours) *and that you would say to* <sup>95</sup> *my Minor, that Roger had a Wife, though we yet know not who she was; and that this appears certainly, because the Lands descended from heir to heir*, and that you tell me, how you would *frame your affirmative part more formally?* Yet in stead of trying whether you could in *terminis* prove (which by this your Rule you ought to do) whether *William* who was the eldest of the three Sons of the said *Roger*, was his lawful Son, or but a bastard, you beg what you should prove, and take it for granted that he was the Son and Heir, and say, *that if the Son and Heir of Roger succeeded by descent in his Fathers Inheritance, then Roger had a Wife;* whereas if *William* was the Son and Heir of *Roger*, the said *Roger* his Father must needs have a Wife, whethersoever *William* succeeded in the Inheritance by descent, or was disinherited; For, none but a lawful Son, can be a Son and Heir; and the same question you beg, when you pretend (*p. 65.*) to prove the sequel of your Major. For in that Argument you say, **Ergo, if the Son and Heir of Roger succeeded by descent in the Inheri-** <sup>96</sup> **tance, then Roger must needs have a Wife, and nothing appears here of a special settlement;** But besides your begging of the Question, the only reason which you bring to prove the said *William* did succeed by descent (and by consequence that his Father was Marryed) is, **because, nothing appears here of a special settlement;** But this is not a proving certainly and in *terminis* that the said *Roger* had a Wife, for though no special settlement doth appear, yet, if we must be tyed to this your way of proving, *William* might possibly be a Bastard, and might come in by special set-

[Page 95.]

[Page 96.]

tlement, though the said settlement be now lost; So that this retorted Argument is but weakly answered.

What you say, *Page 66, 67, 68 & 69*, is but what you have formerly said, and I have abundantly answered, and your al-leadging **that Amicia being of the first venter, is therefore more worthy than those of the second**, is sufficiently confuted by those words of mine, which you repeat in your *70 Page*;

[Page 97.] For though it be true that if a <sup>97</sup> Man die, and leave only Daugh-  
ters, which are by several Wives, that those of the first venter,  
shall be more worthy than those of the second, yet if a Brother  
dye (as in this case) and have no issue of his own, nor any Bro-  
ther, but only leave Sisters, which were by two several venters,  
if that Brother was of the second venter, (as *Randle Blundevile*  
was) then those Sisters that were of the second venter, shall be  
preferred before those of the first, Because, those were of the  
whole blood to their Brother, whereas the Sisters by the first  
venter were but of the half blood.

[Page 98.]

What you alleadge, *Page 71, 72 & 73*, doth not prove that Earl *Hugh's* Grant, was a Release of the Service of one Knights-  
Fee; But that, and all the rest in those *Pages* (as you truly say)  
being nothing to the argument in hand, I will not trouble my  
self or the Reader therewith: Only let me observe, that there is  
no probability at all, but that Sir *Raph Mainwaring* had a farr  
greater Portion with his Wife than those Services; For, the  
having <sup>98</sup>the service of three Knights-Fees, doing the service of  
two Knights-fees, was in effect the having the service but of  
one Knights-Fee, and as I told you in my former Book, was not  
a Portion suitable to the Estate of a very mean Gentleman; so  
that it was certainly a free-gift of the said *Earl*, after the said  
Marriage was past and consummated; And that Grant to him is  
so far from proving, that he had no greater Portion, that you  
your self, when you are told, 'tis like he had a great deal more,  
do confess (*Page 71.*) *it may be so, What then?* And if it be so,

that he had a greater Portion, and it doth not appear how much that Portion was, you can raise no Argument from thence, so that this your second Reason is very invalid.

Also it is very probable that the Lordship of *Henbury* in *Cheshire* might be part of the Portion of the said *Amicia*; For as appears in your *Historical Antiquities*, Page 107. *Henbury* was one of those Towns which *Hugh Lupus* held in Demaine, And I do not find that any *Mainwaring* was possessed thereof, before Sir *Raph Mainwaring*, <sup>99</sup> who was Husband to the said *Amicia*, neither have I ever yet seen or heard of any Record or Deed which shews how *Henbury* first came to the *Mainwarings*.

[Page 99.]

And whereas you tell me, (Page 74, when you speak of your Third and last Reason) that I might have done well to have answered your first Reason better; I shall appeale to the Reader, whether your Third Reason, which you your self confess not to be evincing, be not as strong as your first, and upon the matter the same with it; as also, whether I have not given both your first and third Reasons a very full answer, in the 62, 63, 66 & 67 Pages of my former Book, and therefore it will not be taken off without better reason given by you, then your bare denying it to be a substantial Answer; So that all your three Reasons against *Amicia*, are of no weight at all.

Also, what I have there said will give full satisfaction to the Question you did please to ask, viz. *Whether I* <sup>100</sup> *find that the Historians have left out any of Earl Hughes legitimate Children, except this whom I suppose to be legitimate?* For, those Historians only taking upon them to Record who were heires to *Randle Blundevil*; If *Hugh Cyveliok* had had never so many Daughters by his former Wife, they would never have taken notice of any of them.

[Page 100.]

And whereas you observe, Page 75. How I say, that Mr. *Cambden* hath mentioned *Amicia*, though not among the Co-

heires, yet without the brand of a Bastard, and do reply, *that I know well that he is but of late standing, and not an Historian contemporary with Amicia, and that you and I do also mention her.* It is very strange that you should thus say, whereas the only reasoun why I did speak of Mr. Cambden, was, because, you had said, *That he was one of those Historians who had taken no notice of the said Amicia,* and I onely named him to shew you your mistake therein.

The rest which you say in the 75 & 76 Pages, is but what [Page 101.] you have <sup>101</sup> formerly said, and hath received an answer before.

In your 77, 78 & 79 Pages, you are also so far from answering that Argument of mine, which is contained between the 69 & 75 Pages of my former Book, that that which you pretend to be an Answer (if rightly understood) is the very Argument which I there frame against you ; For, though what you say, *Page 78.* be true, that sometimes the *Justice* is put after the *Constable* and *Dapifer*, and sometimes before the *Constable* and *Dapifer*, yet all the Justices of *Chester*, except Sir *Ralph Mainwaring*, are named in the Charts of the Earles of *Chester*, after the *Constable* and *Dapifer*, and are also named after the *Constable* and *Dapifer*, when they were witnesses to any Deeds ; But it is only in the time of the said Sir *Ralph Mainwaring*, when the *Justice* is named before the *Constable* and *Dapifer*, in the Charts of the said Earles, and it is only he who is named as a witness, and [Page 102.] that frequently before the *Constable* and <sup>102</sup>*Dapifer*, as I have proved by several Deeds, which I then mentioned both out of your former Book, and elsewhere, and doth also further appear by another Deed in your *Historical Antiquities*, *Page 205.* where the said Sir *Ralph Mainwaring* is also named as a Witness before the then *Dapifer*, *Ralph de Montealto* ; And this respect was shewed to the said Sir *Ralph Mainwaring*, although, as you may see in your said Book, *Page 160 & 161.* that the Constable by Charter was to go next the *Earl*, and had his office in Fee,

and that the Steward was to go next after the Constable, and had his Office also in Fee; But when *Philip Orreby*, who did succeed the said Sir *Ralph Mainwaring*, was Justice of *Chester*, then, according to the old usual way, as appears in the 162. *Page* of your First Book, the Constable and Dapifer were again named in the Earles Chart before the Justice of *Chester*, and also as you may see at the bottom of the 144 *Page*, and the top of the 145 *Page* of your said Book, the said Constable was <sup>103</sup> named [Page 103.] as a Witnes before *Philip de Orreby*, though then Justice of *Chester*; And I believe you cannot shew any Chart of any of the Earles of *Chester*, in which any other Justice of *Chester* had the like preeminence; neither do I think you can shew any Deeds in which any other Justice is named as a Witnes before the Constable or Dapifer, and if any such single precedent can perchance be found, I am confident it will prove to be a Deed wherein the said *Philip de Orreby* is named as a Witnes, and was occasioned by the simplicity of the Clark, who did write the said Deed, who finding Sir *Ralph Mainwaring* Justice of *Chester* (the immediate Predecessor of the said *Philip de Orreby*) to be written as a Witnes before the Constable and Dapifer, might thereupon think that *Philip de Orreby* should also be so placed; But it appears by the aforesaid prooves, and by several other Deeds, that it was not allowed to the said *Philip*; And although you truly object, in the 78 *Page*, *How great the uncertainty of subscription of 104 Witnesses was in old Deeds, sometimes putting one before another in one Deed, and after putting the same person after the other in another Deed*; yet, that will be nothing in this case; for, you your self confels, *Page 160 & 161.* of your *Historical Antiquities*; notwithstanding the *uncertainty of subscription of Witnesses, that after certain Offices were annexed to certain Barons, that the matter was without controversie (as to the Constable and Dapifer) and that the Constable of Cheshire in Fee carried it clear by his Office, which was annexed to his Barony, and that the Steward was the next after him*; And therefore this preeminence being thus given to the said Sir *Ralph*, and to

[Page 104.]

him onely; and he also, so farr as I have found, being ever named before all the other Barons of *Cheshire*, after he had Married the said *Amicia*, as well when he had parted with his Office of Justice, as before; I think I may still say, it will be difficult to give a Reason thereof, if he did not Marry a *lawful* daughter of the aforesaid *Earl*.

[Page 105.]

<sup>105</sup> I have now done, but cannot concurr with you, that the Honour of our Grandmother (the Mother of *Amicia*) is a *trivial thing*; However, I am glad to Read, That you take your leave for ever of this Controversie, because I hope all occasion of future Contest will be thereby taken away betwixt You and Him who is,

S I R,

*Baddeley,  
August 5  
1673.*

*Your Affectionate Kinsman  
and very humble Servant,*

*Thomas Mainwaring.*

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*F I N I S.*

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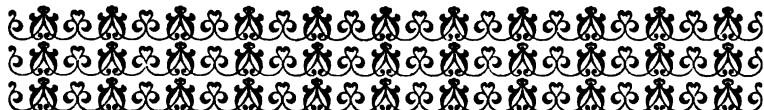
*ADDENDA,*

O R

Some things to be added in my Answer to Sir *Thomas Manwaring's Book*: to be placed immediatly after *Page 90* [of the *Answer*, see pages 49 to 94 *ante*].

[*By Sir PETER LEYCESTER.*]





## 'ADDENDA,

[Page 1.]

### O R

Some things to be added in my Answer to Sir *Thomas Manwaring's Book*: to be placed immediatly after Page 90 [of the *Answer*, see pages 49 to 94 *ante*].

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*Page 20. Line 7. it should there have followed thus —*

WOULD not the Argument be as good on the other side? Many Judicious men are of Opinion, That *Amice* was a Bastard; *Ergo* she was so: And I assure you I have had discourse with many Judicious men who are of opinion, that *Amice* was a Bastard: in these Cases &c. as followeth in the Book.

*2 Pag. 66. after line 20. should have followed thus —*

[Page 2.]

And what Reason can be given by any Lawyer, or other Person, for that Opinion, That Lands in those elder Ages could not pass in *Libero Marritagio* with Bastards, whiles there be many plain Precedents of those Ages which do manifest the contrary? For besides that precedent of *Geva* mentioned before, both in this and my former Book, I shall here give you two or three precedents more: whereby it doth certainly appear, that *Lewellin*

Prince of North-Wales had Lands given unto him in *Libero Marritagio* with *Joanna* base daughter of King *John*.

That *Lewellin* married *Joane* base daughter of King *John*, *Anno Dom. 1206*, See my Book of Antiquities, pag. 47. She is acknowledged and called base daughter of King *John* by these Heralds and Historians following — *Vincent upon Brook*, p. 204.

[Page 3.] *Liber Barlings* Fol. 22. b. *Speed's Histo<sup>3</sup>ry*, p. 518: *Stow's Annals* augmented by *Howes*, p. 167. a. *Poly-Chronicon*, Translated into English by *Trevisa*, l. 7. ca. 33.

1. That King *John* gave Lands with her in *Libero Marritagio*, See *Vincent* in the place cited: where his words are these — *Agatha* [Daughter of the Second *William de Ferrars* Earle of *Derby*] was Parramour to King *John*, on whom he begot *Joane* a base Daughter, married to *Lewellin* Prince of North-Wales, *Anno, 1206*, with whom her Father gave in Marriage the Castle and Lordship of *Ellesmere*. And there he citeth *Lib. Barlings* Fol. 22. b. With whom also agreeth *Poly-chronicon. lib. 7. ca. 33.* and *Knighton* the Monk of *Leicester* in like manner, p. 2417. I think this is pretty clear.

[Page 4.] 2. See also another Precedent in my Book of Antiquities p. 152. where *Lewellin* Prince of North-Wales gives by his Deed the Mannor of *Budeford* in *Warwick-shire*, and the Mannor of *Suttehel* in *Worcester-shire* unto *John the Scot* (afterwards Earl of <sup>4</sup>*Chester*) with *Helene* his Daughter in *Libero Marritagio cum omnibus pertinentiis, sicut Dominus Johannes Rex, ea illi dedit in Libero Marritagio*: what can be clearer? if any object, that it is not said here *cum Johanna filia sua*: I say, that is but a meer Cavil: for it must by common intendment be necessarily so understood, and is implied here as strongly as if the words *cum Johanna filia sua* had been added: because he never Married any other Daughter of King *John*, save only the said *Joane*: And he that can find out, That the said *Lewellyn* ever married any other Daughter of King *John* besides, *aureos Periarum montes mereatur*.

3. It appears Thirdly, by the Authority of the same *Vincent*, in

the place before alledged, that this *Foane* afterwards married *Robert de Audley*, with whom *Henry the Third* gave Lands in *Shepey* also: but the words of *Vincent* are these— And after his death she was re-married to *Robert de Audley*, and had Lands in *Shepey*. <sup>\*Claus.</sup> <sub>An. 14.  
Hen. 3.</sub> given likewise with her by King *Henry the Third*, as shall be more largely discovered in the Life of King *John*.

[Page 5.]

Where I think *Vincent* is mistaken, in saying, it was after the death of *Lewellyn*: for *Lewellyn* dyed not till *Anno Christi 1240*, *tertio Idus Aprilis, scilicet die Sancti Gwylaci*: So *Mat. Paris*, pag. 525. of the Edition put out by *Watts*: but I rather believe she was Divorced from *Lewellyn*; for *Anno 1230, Willielmus de Braus vir nobilis & Potens, a Leolino Principe Walliae Patibulo suspensus est mense Aprilis, cum Uxore sua (scilicet dicti Leolini) ut dicebatur, in Adulterio deprehensus Mat. Paris.* pag. 365. Also I find, that *Anno Domini 1228, 13. Hen. 3. Leolinus Princeps Walliae rebellare cœpit: — Tandem post concursos varios & discrimina multa, per quoddam marritagium cum Rege Concordatus est, & in pace dimissus.* *Knighton*, pag. 2439. So that it seemeth to me, that *Foane* was Divorced from *Lewellyn*.

But it is clear by the Record you-<sup>6</sup>ched by *Vincent, Claus.* <sub>Anno 14. Hen. 3.</sub> That she was then remarried to *Robert de Audley*, and had Lands given with her in Marriage by King *Henry the Third*: and she dyed *anno Dom. 1237*, saith the *Welsh History*, put out by *Powel*.

[Page 6.]

So that we may take notice by the way, that till 14. *Hen. 3.* She was *Lewellyn's* wife; and that King *John* was dead long before: Wherefore King *John* could not grant any Lands in *Libero Marritagio* to *Lewellyn* with any other Woman whiles she was his Wife, (and she was not Divorced till long after King *John's* death) unless you will suppose *Lewellyn* to have had two Wives at one time, and also suppose the King to be ayding and consenting in the wronging of his Daughter: both which is absurd to imagine.

Wherefore Lands passed in *Libero Marritagio* in those elder

Ages, as well with Bastard-daughters as Legitimate Daughters, frequently and usually: ὅπερ ἀδει δεῖξαι, quod demonstrasse oportuit.

[Page 7.]

<sup>7</sup> And many more precedents might without doubt be found in like Case, if any Person would diligently set himself to seek after them among ancient Records and Evidences.

Again, the words of *Glanvil* Chief Justice of *England* (who is the first that reduced our Law into Writing since the *Norman-Conquest*, and lived in the very Age with *Amicia*) are clear in this point, That Lands might then be given by any Gentleman with his Daughter in Marriage, or with any other Woman whomsoever, *Lib. 7. cap. 1.* without any exception: which words you have endeavoured to restrain, but cannot justly do it.

So then the opinion of some Lawyers in our days, not considering what was the Law and Practise herein in those more ancient Ages, and whose opinions you so often urge against me over and over again, are now clearly blown away by plain Demonstration.

And the Terme of Bastard — &c. and so as followeth there in my Book.

[Page 8.]

<sup>8</sup> Here I had ended my *Addenda*, but that I find you have now published a Reply to my Answer; wherein are so many new Accusations, absolute untruths, and gross Absurdities charged upon me (which indeed fall clearly on your self) that I am forced now to vindicate my self, least the World may think me guilty of them, should I pass by them, in silence: And when instead of modest and clear Answers to the very point or hinge of the Controversie, you burst out into extravagant Expressions in things upon the By, it gives me occasion to imagine, that you think your Cause is declining: And howbeit I am tyed up by my promise to write no more Touching *Amicia* (your Confidence of which may perhaps be the Ground of your imposing on the easie Readers those great untruths and absurdities, as said or done by me) I shall both be just to my Word, and yet vindicate my self from those gross things you charge upon me in these Particulars following.

<sup>9</sup>Page, I, 2. In the first place, in the front of your Reply  
 Page. I, & 2. you say, that you doubt not but those of our  
 County that are understanding Persons, will as easily discern  
 from some of my Omissions (though you forbear in Publick to  
 take notice of them) that it was something besides my great  
 love to Truth (pretended by me, alledging the saying of *Aristotle*) which occasioned me thus to asperse my deceased Grand-  
 mother.

[Page 9.]

Whereunto I say, That I am sorry you begin your Reply  
 with an untruth: what Omissions of mine, the understanding  
 Persons of our County do, or may discern, I know not: but  
 what those Omissions be, and what that something was besides  
 my love of Truth (which, you say, I do but pretend unto) you  
 might have done well to have shewed: I am sure there was no  
 malice in the Case: and of that you your self do acquit me,  
 Page 89. But you say there, it was my desire to divulge my  
 supposed new Discovery: But why my desire <sup>10</sup>to divulge this  
 more then other things? And yet you tell me, Pag. 2. that  
 you have in your first Book (and so you hope you shall do in  
 this) endeavoured to avoid all expressions which you conceive  
 might be offensive: how these things agree, and how you keep  
 your Word, let others judge.

[Page 10.]

Also Page 5. You acknowledge you have not found, That in  
 the time of *Ralph Manwaring* there was any Judge of *Chester*  
 but the said *Ralph*: yet it being possible that there might be  
 more then one at a time, you did therefore call him *Chief*  
*Justice*.

Had it not (*think you*) been more Ingeniously said by you,  
 that indeed you did not think on it, or consider it, when you  
 call him so? Since you do very well know, that there was no  
 other Judge of *Chester* at that time: and yet I shall be loath to  
 say it was your vain Glory: but charitably impute it rather to  
 your forgetfulness: This only by the way.

Page 9. Again you say, That I fancy <sup>11</sup>*Geffery Dutton* (who  
 made the Deed of *Nether Tabley* to *Margaret his Daughter*) was

[Page 11.]

Witness to his own Deed : and that I would needs have *Domino Galfrido de Dutton*, a Witness subscribed to the Deed of *Nether Tabley*, to be the same *Geffery Dutton* who was party to the said Deed : whereas (say you) it was not he, but his Father.

Indeed I never said he was witness to his own Deed at any time : you put down my words, and then mistake them : I produced that example of the Deed of *Nether Tabley*, to shew that there the said *Geffery Dutton*, Party to that Deed, calls himself only *Geffery Dutton*, and that he was no Knight : For otherwise he would have called himself by his Title ; as *Ego Galfridus de Dutton miles*, or *Ego Dominus Galfridus de Dutton dedi*, &c. which few men will omit in their own Deeds, if they have really the honour of Knighthood : and yet I had seen the same man, in Subscriptions of Witnesses put down by the writer of the Deed, some<sup>12</sup> times with the Title of *Domino* prefixed, as *Domino Galfrido Dutton* : not to his own Deeds, but to the Deeds of others : and that much oftner Subscribed too without the word *Domino* prefixed, then with it. And this I do affirm : and desire the Reader to observe, it is your Grofs mistake of me, not my mistake at all.

And when you say, that *Domino Galfrido de Dutton* Witness to the other *Geffery Dutton's* Deed of *Nether Tabley*, was his Father : I say, that is your grofs mistake : for it was *Geffery Dutton of Chedle* : and the other witness there *Domino Thoma de Dutton*, was *Dutton of Dutton* : And therefore that I may in-

See my Book of Antiq. p. 226. form you what I see you do not yet know : There were two *Geffery Duttons* of *Budworth*, Father and Son, Ancestors to *Warburton of Arley* : and two

13the latter end of *Henry the Third's* Raign : the last time that I meet with *Geffery Dutton* of Great *Budworth* Son of *Adam Dutton* is anno primo post obitum Johannis Scotici comitis Cestriae: and seems to dye about the middle of *Henry the Third* : now

the Deed of *Nether Tabbly* was made about the very end of *Henry the Third*, or the beginning of *Edward the First*; after the Death of *Jeffery Son of Adam*: else how could this *Geffery* the Son grant away any Lands, till he was poffest of them? whose Father *Geffery* had them whiles he lived: and all these several *Geffery Duttons* (if I mistake not) I have ſeen ſometimes ſubſcribed with *Domino* preſixed: but not any (that I do re-member) writing himſelf thus — *Ego Dominus Galfridus Dutton dedi* — &c. and theſe things (if it were material) I could prove.

Again, you call *Margaret* Daughter and Heir of the ſaid *Geffery Dutton*, *page 7.* which is another grofs miſtake of yours: ſhe was not his Heir: Sir *Peter Dutton* was Son and Heir of <sup>14</sup>the ſaid *Geffery*: and ſo you ſee all theſe untruths and grofs miſtakes are your own, which you charge upon me. And you ſay, *page 7, 8.* a man would think I were well acquainted with all the Deeds of the ſaid *Jeffery Dutton* in my cuſtody, and yet I have run into grofs Erors concerning the ſaid *Geffery*: alſo *pag. 11.* you ſay, though ſuch devices as theſe I may impoſe upon ſilly Readers, yet certainly no intelligent Person will believe what I ſay concerning the ſame. And now let the Reader ſee who is miſtaken, you or I.

(Page 14.)

*Page 11.* And where you tell me, That in my Anſwer, *pag. 5. 6.* I ſaid *Dominus* in old Deeds was never uſed by the Party himſelf, but when it was joyned with another word; as *Ego Robertus Dominus de Moaldiæ dedi* — &c. I confeſs my expreſſion was too ſhort: for you muſt understand me, except where it is meant of a Knight: for there a little after I ſpoke of Knights, who uſually ſtyle themſelves thus — *Ego Dominus A. B. dedi* — &c. or *Ego Dominus A. B. miles* <sup>15</sup>*dedi* — &c. So that I ſhould have ſaid, the word *Dominus* was ſometimes uſed for a Lord of a Mannor: and then it is always joyned with another word: as *Ego Robertus Dominus Moaldiæ*: and in this Notion it is always to be expounded by our *English* word [Lord]: as *Robert Lord of Mould, William Lord of Pever*, and the like: and ſo it is uſed even at this day.

(Page 15.)

But the word (*Domino*) as it is used and prefixed to names in old Deeds among the Witnesses Subscribed under King *John* and *Henry* the Third, it is sometimes understood of Knights, sometimes of Clergymen, and sometimes of the better sort of Gentlemen of Quality, so as it is not easie to distinguish them : nor is it a sure Rule to be understood of a Knight in those Ages, unless the word *Milite* do follow : neither were Knights so very frequent, till towards the end of *Henry* the Third's Reign : For *Matthew Paris* tells us, that *Anno Dom. 1256, 40 Hen. 3.* such as had fifteen pounds yearly in <sup>16</sup> Land, were called to be made Knights or to be fined.

[Page 16.]

*Page 11.* So also when you ask me, why I called Sir *Thomas Manwaring* of *Warmicham* Knight upon the like proof (meaning by *Domino* prefixed to his name in Subscriptions) and also in my Answere call Sir *Ralph Manwaring*, Sir *Roger Manwaring*, and Sir *William Manwaring* Knights upon the like proof, if it be not certainly understood of a Knight, but where it is meant for a Clergy-man ?

Sir *Thomas Manwaring* is mentioned among others with the word *Militibus* added, 2. *Edw. 1. Lib. A.* Fol. 157. h. in a Fine.

[Page 17.]

But I did not always in my first Book heed these small things so accurately : for possibly I may sometimes have called some so, who are not : and in other places may perhaps have omitted that Title to some who were Knights : but since you put me upon it, and make it a matter of busines, I shall give you my Opinion : For (as I have before declared) it is no sure Rule of a Knight <sup>17</sup> always but when the word *Milite* is added ; unless also by some other proof we find the same Person writing himself so in his own Deed : as you see by the Deeds you produce — *Ego Dominus Thomas Manwaring dedi* — &c. which Title he would not give to himself unless he were *revera* a Knight : But that the first *William Manwaring* of *Pever* was a Knight, (howbeit I find there was a *Dominus Willielmus Manwaring* Parson of *Wernith* somewhat contemporary with him, which usually have the word *Parsona* added, but not always neither) or that *Roger Father*

of the first *William Manwaring* of *Pever*, were either of them Knights, I have not seen any presumption for it by like proof: nor do I see reason enough to perswade me, that *Ralph Manwaring* Judge of *Chester* was a Knight: for that in his own Deeds he calls himself only—*Ralph Manwaring* Judge of *Chester*: neither have I seen him subscribed at any <sup>18</sup>time with *milite* added: and as oft or ofter without the word *Domino* prefixed, as with it. So that if you have any such Deed to illustrate it, you might do well to produce it: And for my giving them all the Title of Knight, I did it out of Civility, knowing also your desires therein: for I tell you in my Book before *Page 8*, that I had rather give to any, especially to your Family, more then is due, then less.

[Page 18.]

*Page 30.* Again, you fasten upon me another untruth, where you tell me, That I have seen the Opinion of a Judge under his hand, together with Reasons for the same, touching *Amicia*.

Sure my memory is not so bad, but I could remember something of it; or his name, which I protest I do not: or if I ever saw it, I never perused it: for I otherwise should in my Book of Antiquities have taken notice of those Reasons.

<sup>19</sup>*Page 31.* Also of your Reply, you say you know that thoſe two *Heralds*, who at *Chester* did declare their Judgments against me, did then hear all the Reasons that I could then alledge.

[Page 19.]

It is true, That two *Heralds* at *Chester* did long time ago declare their Opinions touching *Amicia*: and I remember well, that I told them, I was of a contrary Opinion: but that I gave them then all the Reasons I could alledge against their Opinion, I utterly deny: nor was it possible to have alledged the Tenth part of what I could have done) in so short space, as while we were together: some Reasons (I deny not) but I might give against their Opinion, but I am sure I had no satisfactory Answer to what I did then alledge: But what is this to the purpose? There will be diversities of Opinions in most things to the end of the World: *Tot Homines, Tot Sententiae*: but which is the right <sup>20</sup>Opinion, that is the point: I can assure you, I heard a Lawyer

[Page 20.]

of very good note, and a good Antiquary, who had seen what hath been written in this Matter both by you and me, declare his Opinion in publick (without any asking by me at all) That Lands in those elder Ages did passe *in Libero Marritagio* all one with Bastards as no Bastards: and further I will adde, that I believe the fundry precedents I have given in the beginning of this *Addenda*, will satisfie any judicious and indifferent Person how the Law was then taken in those elder Ages.

I have one other thing and no more: *Page 86.* You tell me (speaking of *William* Arch-bishop of *York*, and *Roger Clinton* Bishop of *Chester*, that they were both Bishops together about *Anno Dom. 1142*) that there was nothing made me I could not find it to be so, but because I would not find it to be so.

[Page 21.]      <sup>21</sup> Whereunto I say, that you have mustered up a great number of Authors from *pag. 70.* of your Reply, to *pag. 89.* by which it is plain, that *William* was Elected Arch-bishop of *York* about 1142: but none of all these do say, that ever he had the Pall: For that was denied by the *Pope*, and by consequence he was no Arch-bishop, nor ever confirmed therein: for by reason of the great Opposition made by the Dissenters from his Election, *William* went to *Rome* in hope to have procured the Pall, and to have been Confirmed; but it would not be: where in the Court of *Rome*, after that his Cause had been there depending above two years, it was at last by *Pope Eugenius* adjudged against him, and *Murdac* had it. Nor is *William* at all put down among the Catalogue of the Bishops, till after the Death of *Murdac*, *An. 1153.* either by *Godwin*, *Isaacson*, or Doctor *Heylin*, in their Catalogues. <sup>22</sup>Indeed *Simeon Dunelmensis* puts him before *Murdac*; but that Catalogue is mistaken either in the Copy, or (which I rather think) in the Writer: for in that Roll of his, *Roger* is placed next after *Henry Murdac*, which is not true: for it is apparent by all, that *William* succeeded *Henry* legally, *An. 1153.* and then again *Simeon Dunelmensis* in that Roll puts him before *Henry*, when in truth he was no Arch-bishop: So that it seemeth *William* is there mis-writ above *Henry*, which should

have been put next after him. So that indeed there was no Arch-bishop of *York* after *Turftin* legally, till about the year 1145. when it was adjudged for *Henry Murdac*; the other Election of *William* being declared Null and void. But suppose he were for some short space esteemed by the People as Arch-bishop, yet methinks this is no good ground to call him Arch-bishop in any Deed, or Record: because he was no <sup>23</sup>Arch-bishop at that time: and therefore seems to be *Vitium Scriptoris in Bacon's Deed*, if it were so intended: nor was it proper to direct that Deed to any Archbishop of *York*, but *Canterbury*: for *Chester* was then within the Province of *Canterbury*, and not of *York*: and therefore I cannot yet but think, that *Bacon's Deed* therein is mistaken in the Letters: and it were good that the Original were compared for satisfaction: which I was promised, but cannot yet get it.

[Page 23.]

Nor doth *Richard Bacon* aforesaid seem to live so soon, as to be Contemporary with *Randolph de Gernoniis*, but rather with *Randolph Blundevil*. For your Reasons *Page 87, 88, 89.* that he was Contemporary with *Randolph de Gernoniis*, are of little moment: your first Reason is, because you find *Hugh Wac'* and *Richard Pincerna* (two of his Witnesses to *Bacon's Deed*) were also Witnesses to a <sup>24</sup>Deed made *Anno 1152*, which falls in the latter end of the Life of *Randolph de Gernoniis*: *Ergo Richard Bacon* lived before the Age of *Randolph Blundevil*. I pray, see what a mighty Reason this is: as though some men may not live to be Witnesses Forty or Fifty years together, and more; and so may be Witnesses both to some Deeds made in the time of *Randolph de Gernoniis*, and also to *Richard Bacon's Deed*, supposing it to be made in the time of *Randolph Blundevil*: Since there is not above Twenty nine years between the Deed before mentioned, and the time of *Randolph Blundevil's* being Earl of *Chester*: So that those men might be Witnesses to *Bacon's Deed* also, yea though it were made under *Richard the First*, or latter; besides the mistakes which may happen by mens names, when many Fathers and Sons oftentimes bear the same

[Page 24.]

[Page 25.] Names. And for your other Reason, that none <sup>25</sup>of those Witnesses to *Bacon's* Deed, was Witness to the said Deed of *Randolph Blundevil*, nor to any other of his Deeds that you can find; this hath so little Reason in it that it needs no Answer: as though two Deeds made at two places of great distance, suppose we one at *Rouceſter* in *Staffordshire*, and the other at *Nottingham*, may not have all contrary Witnesses, and yet perhaps might both be made within a moneth one after the other: See here your Reason: and *William Bacon* one of the Witnesses to *Richard Bacon's* Deed, I find Witness to a Deed of *Randolph Blundevil*, *Monaſticon*. Vol. 2. Page 261. a.

[The words within brackets are blotted out in the printed copies.]

[Page 26.] But suppose all (as you say) that *Richard Bacon* were Contemporary with *Randolph de Gernoniis*, then must *Bacon's Mother* be Daughter of the first *Randolph*: yet she may be a Bastard for all that: [and it is probable she was so:] for I find but two Daughters of that *Ran-<sup>26</sup>dolph*: *Agnes* married *Robert de Grentemaisnil*, a great Family then in *Normandy*; and *Adeliza* married to *Richard de Clare* Earl of *Clare* and *Hertford* in *England*. But no Legitimate Daughter (I warrant you) ever married any of the *Bacons*: whereas I suppose *Richard Bacon* Contemporary with *Randolph Blundevil*, and then she was certainly the Daughter of *Hugh Cyveliok*, and a Bastard.

It is certain by *Bacon's* Deed, that, that *Randolph* Earl of *Cheſter*, from whom *Richard Bacon* obtain'd Confirmation and Warranty, was Uncle to the said *Richard Bacon*: and also, that that *Randolph* Earl of *Cheſter*, who did grant him a Confirmation and Warranty set down in the *Monaſticon*, Vol. 2. Page 268. was *Randolph Blundevil*, as you confess Page 73. of your Reply.

[Page 27.] But (say you) the Deed of that Earl *Randolph* his Uncle is not in the *Monaſticon* but was proba-<sup>27</sup>bly lost: but how doth it appear, that ever there was such a Deed, or any other Deed of Confirmation but that in the *Monaſticon*? It is a great deal more probable, that there was no such other Deed, but only this of *Randolph Blundevils*, which doth agree and answer to the

Deed of *Richard Bacon* in all Points exactly: and so, his Mother must needs be Daughter of *Hugh Cyveliok*.

And now I have done; nor should I have given my self, or the Reader any trouble at all, more then the Precedents before mentioned in these my *Addenda* (which were omitted before) had it not been for the said Accusations, untruths, and absurdities charged upon me in your Reply. And it is well you Published the same now in my Life time, whiles I had opportunity to clear them to the world: I might here also have taken notice of many other Errours and defects in your Reply, with <sup>28</sup>your insufficient Answers to what I have formerly said, but I wave them all in regard of my word: and submit my self to the judgment of all Learned, Judicious, and Impartial Readers, who shall duly weigh what hath been already said on both sides, touching the Contest of *Amicia*, and others: *Nam magna est veritas, & prævalebit*: And must declare, that what I have writ is truly the Opinion and Judgment of

[Page 28.]

*Moberly*  
*Novemb. 6.*  
1673.

Sir,  
Your Affectionate  
Cofin and Hum-  
ble Servant

*Peter Leycester.*



A N  
ANSWER

T O

Sir PETER LEICESTER'S

Addenda,

O R,

Some things to be Added in his  
ANSWER to

S<sup>ir</sup> THOMAS MAINWARINGS

B O O K.

---

W R I T T E N

By the said Sir Thomas Mainwaring.

---

L O N D O N,

Printed for Samuel Lowndes over against  
Exeter-House in the Strand, 167<sup>3</sup><sub>4</sub>.





# 'T O

[Page 1.]

Sir *Peter Leicester* Baronet.

SIR;



Received your *Addenda* to the *Answer* to my former Book, on Monday the 12th of *January* last; in writing of which, whether you are just to your word; or not, let the whole World Judge.

As for that which you say in the first *Page* thereof, I think it was not worth your adding to what you had formerly written, unless you could make it to appear that those persons whom you call judicious men, be such whose opinions are like to be of equal weight with those Judges and Heralds who are against you, which (I believe) will be very hard for you to do: And if you <sup>2</sup>could, we should therein be but upon equal termes.

[Page 2.]

When you tell me in your <sup>2</sup> *Page*, that you do give me two or three precedents more, besides that of *Geva*, to prove that Lands in those elder ages did pass *in libero maritaggio*, I cannot but smile, to see that you still say, that the gift to *Geva* was such a Precedent, considering how in my *Defence of Amicia*; *Page* 43, 44. and so on to the middle of the 50 *Page*, as also, in my *Reply* to your *Answer*, p. 23. and p. 45, 46. and so on to the 60. *Page*, I have made it to appear, that it is very uncertain that the said *Geva* was a Bastard, but most certain that the Gift to *Geva* was not a Gift in *Frank-marriage*.

And now I shall come to your pretended new precedents, which you mention *Page* 2. and so on to the end of the 6 *Page*

[Page 3.]

of your *Addenda*, and in my Answer thereto, I shall make it very clear that they are not such precedents as you take them to be, but are gross mistakes of yours, you erring in no less then these five particulars following. First, in conceiving that *Joane* wife of the said *Lhewellin*, and daughter to King <sup>3</sup>*John*, was that base daughter named *Joane*, which King *John* had by *Agatha* daughter to the second *William de Ferrars* Earl of *Derby*; Secondly, in saying that the said *Lhewellin* did marry *Joane* daughter of King *John* in the year 1206. Thirdly, in alledging that King *John* gave *Ellesmere in libero maritagio* with his said daughter *Joane*. Fourthly, in pretending that the Manner of *Budeford* in *Warwickshire*, and the Manner of *Suttehall* in *Worcestershire* were given by King *John* to the said *Lhewellin* with any daughter of the said King *John*. And lastly, in saying that that *Joane* who was wife to *Robert de Audeley*, was the same *Joane* who was wife to the said *Lhewellin*.

[Page 4.]

And first, you erre in saying that *Joane* who was the wife of the said *Lhewellin*, was the same *Joane* which King *John* had by the said *Agatha*; For as you may see in your *Historical Antiquities*, p. 132. compared with *Vincent*, p. 204. (which is the place you bring for proof of what you say) the said *Agatha* was daughter to *William Ferrars* Earl of *Derby*, by his wife *Agnes* the third sister and coheir of *Randle Blundevil* Earl of <sup>4</sup>*Chester* and *Lincolne*, which *Agnes* was daughter of *Hugh Cyveliok* Earl of *Chester* by his wife *Bertred*. Now the said *Hugh Cyveliok* dying as appears in your *Hist. Ant.* p. 134. in the year 1181. and the said *Bertred* his wife (as is proved *Rot. de Dominabus pueris*, &c. in *Scacc. penes Remem. R. sub. Tit. Linc. Rot. 1.*) being but Twenty four years of age when her said husband dyed, it will from thence appear, that *Joane* daughter of the said *Agatha* could not possibly be the wife of the said *Lhewellin*; For, if we suppose that *Randle Blundevil* was younger then his third sister *Agnes* (which I am confident you do not believe) and that the said *Bertred* was begotten with Child at thirteen yeares of age, and came so nimblly with her children as to have her first daugh-

ter when she was fourteen years old, her second daughter when she was fifteen years old, and her third daughter *Agnes* when she the said *Bertred* was sixteen years old, then the said *Agnes* would be eight years of age in the said year 1181. If we also suppose the said *Agatha* to be the eldest of the six children of the said *William Ferrars* and *Agnes*, (though she <sup>5</sup> might be the youngest) and that she the said *Agnes* had the said *Agatha* when she the said *Agnes* was but fourteen years old, then she the said *Agatha* would be born in the year 1187. If we also suppose that the said *Agatha* had her daughter *Foane* when she the said *Agatha* was but fourteen years old, then the said *Foane* would be born in the year 1201. and yet by all this strange way of reckoning, *Foane* the daughter of *Agatha* would have been but about three years of age, when the said *Lhewellin* was married, which (as anon will appear) was in the year 1204. So that this *Foane* daughter of *Agatha* was so far from being wife to the said *Lhewellin*, that there is no likelihood that she was born at the time of the said *Lhewellins* marriage. But the said *Lhewellin* was 28 years of age in the year 1204, For, *Sylvester Giraldus Cambrensis* in his *Itiner. Cambr.* printed at *London* 1585, p. 64. and 203. tells us, that in the year 1188, (at which time the said *Silvester* was living) the said *Lhewellin* was 12 years old.

Secondly, you run into another error in alledging that the said *Lhewellin* <sup>6</sup> did marry his wife *Joan* in the year 1206. whereas he was her Husband in the year 1204. in the 6 year of King *John*, as will appear by your own Authors, *Stow* and *Speed*, and by several others; as also by this Copy of King *John's* Precept to the Sheriff of *Shropshire*, to make Livery of the said Lordship of *Ellesmere*.

*Ex. Rot. Claudio de anno Sexto Regis Johannis (in arce Lond.) membrana 7.*

*Rex Vicecom. Salop. Salutem. Scias quod dedimus dilecto filio nostro Lewellino manerium de Ellesmere, cum omnibus pertinentiis suis, in maritagio filiae nostrae, Et ideo, &c. Teste, &c. apud Wigorn. 23. Martii.*

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Thirdly, you are guilty of a third error, in pretending that King *John* did give the Lordship of *Ellesmere*, *in libero maritagio* with his Daughter *Joan*; for your own Authors, as well as the aforesaid Record, do only say, that it was given *in Maritagio*; so that your arguing that *Ellesmere* was given *in maritagio*, and therefore was given *in libero maritagio*, is very irrational; For I have shewed in the 39 and 40 pages of my *Reply* to your *Answer*, that *maritagium* is twofold, and that Lands may be given *in maritagio*, to one that is not of the Blood, but (as I have often proved) Lands cannot be given *in free-marriage*, but with one that is of the whole Blood, neither can they be so given, unless the word *liberum* be used as well as the word *maritagium*, as I have shewed in the 56 and 57 pages of my said *Reply*.

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But if it were so, that you could have proved *Joan*, the wife of the said *Lhewellin*, to have been the base Daughter of King *John* by the said *Agatha*: and if it had been so, that this gift of *Ellesmere* had been *in libero maritagio*, yet it would have stood you in no stead; for as you may see *Coke upon Littleton*, fol. 21. b. if the Donee (in a Gift of Frank-marriage) that is cause of the gift be not of the blood of the Donor, yet there may pass an Estate for life, if Livery be made; And in this case of *Ellesmere* (as appears before) Livery was made; And you may find in the *Welsh History*,<sup>8</sup> put out by Doctor *Powell*, p. 306. and *Mat. Par.* p. 625, and 626. that though *Ellesmere* was injoyed by the said *Lhewellin*, yet it was not long enjoyed by his Son *David*, but was the next year after the death of *Lhewellin* in (or about) the Feast of the Decollation of *St. John Baptist*, in the hands of King *Henry* the III. and as appears by good Record, the custody thereof, together with the Hundred of *Ellesmere*, was afterwards committed by the same King to the Trust of *Hamon le Strange*.

• Fourthly you are also mistaken in thinking that the Mannors

of *Budeford* and *Suttehall*, were given by King *John* to *Lhewellin* with his Daughter *Joan*, and for all your boasting demand of what can be clearer? yet your Deed is far from proving what you suppose it doth; For it neither says that King *John* gave those Mannors *cum filia sua bastarda*, or that he gave them *cum filia sua*.

And whereas you say in the fourth page of your *Addenda*, that *the said Prince Lhewellin never married any <sup>9</sup>Daughter of King John but the said Joan*, I shall thus far agree with you, That he married a Daughter of King *John's*, named *Joan*; and but one Daughter of his, but not that *Joan* which you suppose. But certainly your conceit that *Lhewellin* could not have a former Wife, unless she was another Daughter of the said K. *John*, is a very wild one; For, King *John* might give those Mannors to *Lhewellin* with any Woman that was of his kindred; and it is very apparent that our English Kings about that time were very desirous to have Alliance with the Princes of *North-Wales*; For, besides that Match of *Lhewellin* with the Daughter of King *John*, and this Match of *John Scot* with *Hellen*, Daughter of the said *Lhewellin*, *David ap Owen* (Uncle to the said *Lhewellin*) did marry a Sister of King *Henry the II.* as you may see in *Sylvester Giraldus*. p. 203, and the *Welsh History*, p. 235. And King *Edward the I.* also caused *Llewellyn ap Griffith Lhewellin*, to marry a Daughter of *Simon de Mountford*, Earl of *Leicester*, which Daughter the said Earl had by a Daughter of King *John*, and this, although the said *Lhewellin ap <sup>10</sup>Griffith Lhewellin* would have married elsewhere, as you may read in *Knighton col. 2462. num. 26*, and *num. 50*. And although we cannot tell the name of her who was the first wife of that *Lhewellin*, who married *Joan* the Daughter of King *John* as aforesaid, we being ignorant of that, as we also are of the Wives of many great persons, and of many other things in those elder ages, yet the said *Lhewellin* must necessarily have a former Wife, as will appear by these following Reasons.

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First, because most Writers, as *Fabian* in the 7 Part of his *Chronicle*, p. 13. a. *Stow*, p. 167. a. Doctor *Powell* in his Notes on the *Welsh History*, p. 259. *York*, p. 20. *Speed* in his *History* printed at *London*, 1632. p. 573. *Vincent on Brooke*, p. 204. *Cambden* in his *Britania*, in Latine, Printed at *London*, 1607. p. 453. and *Knighton*, col. 2417. num. 42. do all tell us of Lands given by the said King *John* to the said *Lhewellin*, with his Daughter *Joan*, and yet none of them do say, that these Mannors of *Budeford* and *Suttehall*, or either of them were given with the said *Joan*.

[Page 11.] <sup>11</sup>Secondly, Because our best Authors, who tell us what Children the said *Lhewellin* had by the said *Joane*, do only name one son, viz. *David*, and two daughters, viz. *Marret* married to *John de Bruse*, and *Gladys* married to Sir *Raph Mortimer*, but none of them doth name *Hellen*, so that it seems *Hellen* was no daughter of his by the said *Joane*.

Thirdly, Because (as before appears) the said *Lhewellin* married the said *Joane* in the year 1204. Now *Randle Earl of Chester* coming to the City *Damiata* in the beginning of the year 1218. as you may see in *Matt. Paris*, p. 303. n. 24. & 309. n. 16. compared together, and this Match of *John Scot* and the said *Hellen* as you may find in *Knighton*, col. 2430. n. 9. being agreed on by *Randle Earl of Chester* and the said *Lhewellin* before the said *Randle* went thither (and by consequence about the year 1217.) What likelihood is there that the said *Joane* could have any daughter old enough to be married to the said *John Scot*, it being impossible that *Lhewellin* could at that time have any Child by King *John's* daughter, who could be <sup>12</sup>above the age of twelve years; And though you pretend that *John Scot* did marry the said *Hellen* about the year 1222, yet you do that, because she could not well be marriageable till about that time if her Mother had been married in that year, which you falsely supposed she was. But there is no likelihood that *Randle Blundevil*

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would go to the *Holy Land* after the said marriage was agreed on, before it was Consummated, and that he had thereby some assurance that the said *Lhewellin* would keep that peace which was then made: But, *Lhewellin* might very well have a daughter by a former wife, who in the year 1217. might be old enough to be married to *John Scot*, for the said *Lhewellin* (as appears by the proofes before) was then aged 41 years; And it is like that *John Scot* was then of a good age, for, if his Grandmother *Bertred* had his Mother *Maude* when she the said *Bertred* was 18 years of age, and if his Mother *Maude* had him the said *John Scot* when she was also 18 years of age, yet *John Scot* would be born in the year 1193, and would be 24 years old in the year 1217.

<sup>13</sup> Fourthly, (which doth absolutely clear the point) the said *Lhewellin* could not possibly have given the Mannors aforesaid *in free marriage* with his daughter *Hellen* unto the said *John Scot*, unless they had been given to the said *Lhewellin* with a former wife, and that the said *Hellen* was the heir unto his former wife; For when lands are given *in free marriage*, the husband hath not the inheritance of the said lands, neither hath he so much as an estate for life, until he be Tenant by the Curtesie of *England*; And you cannot pretend (according to your old subterfuge) that the Law in this point was differently holden in those elder times from what it is now; For, as you may see in my Lord *Coke* on *Littleton*, fol. 22. a. the husband in the time of King *Edward* the Third, was so far from having the inheritance of Lands given to him in Frankmarriage, that if he and his wife were divorced, the woman should enjoy the whole land; And for this he cites in the Margent 13 *Edw.* 3. tit. *Afs.* 19 *Edw.* 3. *Afs.* 83. with several other proofes of the like nature; Also in the <sup>14</sup>time of King *Edw.* 1. as you may see in the Antient Treatise called *Fleta*, the inheritance in these cases was in the wife, and not in the husband: For in the 3 Book and 11th Chapter, *de donationibus in maritagiis* it is thus said, *Et quam-*

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*vis fiat mentio in donatione, quod terra data sit in maritagium tali viro, cum tali uxore, res data tamen est liberum tenementum uxoris, & non viri, cum non habeat nisi custodiam cum uxore, donec liberum tenementum sibi accrescat, per legem Angliae: Secus si pro homagio & servitio viri & in Maritagium facta fuerit donatio.* And so also *Bracton* (who lived in the time of King Henry the Third, and also in the time of the said *Lhewellin*) lib. 2. cap. 11. says, *Si autem fiat mentio quod terra data sit in maritagium cum uxore & eorum hæredibus, communes hæredes de corpore utriusque admittantur, qui si defecerint, revertitur terra data, & alii remotores excluduntur: quia res data est liberum tenementum uxoris, & non viri, cum non habeat nisi custodiam cum uxore. Si autem sic terra detur in Maritagium, viro cum uxore & eorum hæredibus, pro homagio & servitio viri (quod fit aliquando) licet 15 detur in liberum maritagium, quæ sunt sibi ad invicem adversariae repugnantia, tunc prefertur homagium, & erit ac si fieret donatio tam viro quam uxori.* And so also my Lord *Coke* on *Littleton*, fol. 21. b. tells us, *That if the King give Land to a man with a woman of his kindred in frank-marriage, and the woman dyeth without issue, the Man in the Kings case shall not hold it for his life, because the woman was the cause of the gift, but otherwayes it is in the case of a common person,* and for this in the *Margent* he cites 9 H. 3. *Dower*. 202. So also Mr. *Glanville* (who lived in the time of King Henry the Second, and before the time of the said *Lhewellin*) lib. 7. cap. 18. to the same purpose sayes, *Cum quis itaque terram aliquam cum uxore sua in maritagium ceperit, si ex eadem uxore sua hæredem habuerit filium, vel filiam clamantem & auditum infra quatuor parietes si idem vir uxorem suam supervixerit, sive vixerit hæres sive non, illi in vita sua remanet maritagium illud, post mortem vero iphus ad donatorem vel ejus hæredes est reversurum. Sin autem ex uxore sua nunquam habuerit hæredem, tunc statim post mortem uxoris ad donatorem vel hæredes ejus re-<sup>16</sup>vertetur maritagium;* so that it is clear that the lands which were given with the said *Hellen* to the said *John Scot* were given to the said *Lhewellin* with a former wife, who

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was Kinswoman to the faid King *John*, and Mother to the faid *Hellen*, for otherwise the said Gift to *John Scot* could not be good ; But if they were given to the said *Lhewellin* with a wife who was Mother to the faid *Hellen*, but dead at the time of the gift to the said *John Scot*, then the said *Lhewellin* being Tenant by the Curtesie of *England*, and the inheritance being in the said *Hellen* he might passe away his Estate to the said *John Scot* with the said *Hellen*, and they might lawfully hold the said Mannors *in liberum maritagio*, according to the Agreement made betwixt the said *Randle Earl of Chester* and *Lincolne*, and the said *Lhewellin Prince of North-Wales*.

Lastly, You erre a fifth time in saying, that *Joane* the wife of *Robert de Audeley* was the same *Joane* who was wife to the said *Lhewellin*; For, that cannot possibly be, because *Robert de Audeley* married *Joane* the base daughter of King *John* by *Agatha*, who might well be marriageable in the 14 year of King *Henry*<sup>17</sup> the Third, which fell out to be in the years 1229. and 1230. But, I have before shewed that there is no possibility that the said *Joane* daughter of *Agatha* could be wife to *Lhewellin* in the year 1204. nor any likelihood that she then was born. And this mistake of yours doth further appear, because (as before is shewed) Prince *Lhewellin* was husband to the said *Joane* in the year 1204. and (as you well know and confess) he dyed not till the 24th year of King *Henry* the 3d. How then can that *Joane* who was wife to *Robert de Audeley* in the 14th year of King *H. 3.* be the same *Joane* who was wife to *Lhewellin*? unlesf she had two husbands living at one time. Or, How can what your Author *Vincent* fayes be true, *That she was re-married to Robert de Audley, 14 H. 3. after the death of Lhewellin*, seeing the said *Lhewellin* died not till the 24th year of *Henry 3d*? and did also outlive his wife *Joane* three yeares? Certainly, if *Vincent* had known as well as you, how long the said *Lhewellin* lived, he would never have said that *Joane* the wife of *Robert de Audley* was the same *Joane* who was wife of *Lhewellin*; But though you do acknowledg<sup>18</sup> that *Vincent* did

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erre in saying *Lhewellin* was dead, when *Foane* was married to *Robert de Audeley*, yet you would willingly justifie the other part of his error, in making *Audeleys* wife *Foane* to be the same woman with *Lhewellins* wife *Foane*, and to do this, you fancy that *Lhewellin* was divorced from his wife *Foane*, though there be no Author who doth alleadge any such thing. And, Can we think that a Prince of *North-Wales*, and a daughter of *King John* could be divorced, and one or both of them marry again in the life-time of each other, and no writer take notice thereof? Or, can it be, that *Mat. Paris*, who lived at that very time, should (in his 365. *Page*) speak of *William de Braus* his being taken in Adultery with the said *Foane*, with an (*ut dicebatur*) only? Or, the *Welch History* (p. 286.) with an (*as it was reported*) if the Adultery was so notorious, as that she was divorced for it? Indeed, you tell us out of *Knighton*, col. 2439. that *Anno Domini 1228. 13 H. 3. Leolinus Princeps Walliae rebellare cepit:— Tandem vero post concursus varios, & discrimina multa, per quodam maritagium cum Rege concorda-<sup>19</sup>tus est, & in pace dimissus*; and from these words, *per quoddam maritagium*, you would insinuate a *Divorce*, and a new Marriage of the said *Foane*, with *Robert de Audeley*, which divorce and marriage is further fetcht then any thing that I ever heard of in all my life; For, it is not likely that the putting away of the Kings Sister could be a means to procure Peace, and none knowes betwixt what parties the marriage there spoken of was; But you did well to break off at the words *in pace dimissus*, for if you had added these words of *Knighton*, which immediately follow the other, viz. *Anno Domini sequenti* (the Figures 1229. being also put in the margin) *Lewelinus eundem Willielmum de Braus Baronem nobilem quem ad festa Paschalia invitaverat, post epularum copiam super adulterio & violatione uxoris suæ accusans, & malitiose eum & hostiliter ingressus est, & cum in carcerem trudens morte turpissima & absque omni judicio sententialiter interemit.* It would from thence have appeared that neither the Divorce or second marriage of the said *Foane* could thereby be meant, unless you

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would have a Divorce in the year 1228, for an <sup>20</sup> Adultery not committed till the year 1229. And with *Knighton* agrees the said *Mat. Paris*, p. 365. n. 10. (mentioned in the 5 Page of your *Addenda*) who saith, that *William de Braus was hanged for that supposed Adultery, in the moneth of April, in the year 1230*. And we well know, there is but one week betwixt the last day of the year 1229. and the first day of *April 1230*.

Also, in the 6 Page of your *Addenda*, where you tell us out of the *Welsh History* put out by Doctor Powel, that *Lewellin's wife died in the year 1237*. if you would have added what is further said in the same Page, it would have given satisfaction that *Lhewellin's wife was never divorced*, For, *Page 293.* you may thus read, *The next Spring (1237.) died Joane daughter to King John, Princess of Wales, and was buried upon the Sea shore within the Isle of Anglesey at Lhanvae as her pleasure was, where the Prince did build an house of barefoot-Friars over her grave*. Now certainly the *Welsh History* would not then have called her *Princess of Wales*, nor her husband have built that house over her, if she had been di-<sup>21</sup> vorced from *Lhewellin*, and Married to the said *Robert de Audeley*.

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If any object, That though *Joane* the wife of *Lhewellin* was not the base daughter of King *John* by *Agatha*, yet it is like she was his base daughter by some other woman, because of those Authors which you cite to that purpose ; I answer, and say, that it is nothing to the case of *Amicia*, whether the said *Joane* was a Bastard or not, as I have before proved ; But however it doth not yet certainly appear to me that she was so ; For, though *Vincent* upon *Brooke*, *Speed*, *Stow*, and the *Monke of Chester* who did write the *Poly-Chronicon*, and some others do say, that she was a Bastard, yet they are not much to be regarded, because the said Author of the *Poly-Chronicon*, (as *Vossius* tells you in his *Book de Historicis Latinis*, p. 487.) dyed in the year 1363. which was 159. years after *Lhewellin* married the said *Joane*, and yet

the said Monke lived long before any other Author (which I have taken notice of) who doth call her a Bastard. Let us therefore examine the matter a little ; and in order thereto, let [Page 22.] **22** us observe how many wives the said King *John* had.

First, he married *Alais* daughter of the Earl of *Moriana* in the year 1173. as you may read in *Brompton's Chronicon*, col. 1082. n. 35. *Hoveden* (*Frankfurt Edition*, printed 1601.) *Page 532. n. 5.* *Matt. Paris* (put out by *Doctor Watts*) *Page 127. n. 5.* (which Editions of *Hoveden* and *Paris*, I do all along follow) and the like you may find in *Vincent upon Brooke*, *Page 133.* who also there tells you, that by *Moriana* is not meant *Moreton*, but *Savoy*, with which *Matt. Par. p. 751. n. 46.* doth also accord ; But the said *Alais* being then scarcely seven yeares of age, as you may see in *Matt. Paris, p. 127. n. 6.* and dying presently after, the said King *John* could not possibly have any issue by that wife.

Soon after this, *viz.* in the year 1176. (as you may read in *Hoveden, p. 553. n. 46.* and *Matt. Paris, p. 132. n. 29.*) there was an Agreement for a marriage to be had between the said *John* (then youngest son of the said King *H. 2.*) and a daughter of *William* Earl of *Glocester*, <sup>23</sup>son of *Robert* Earl of *Glocester*, which said daughter is not there named, but her name was *Hawisia* or *Avis*, and the marriage afterwards took effect, but he was divorced from her in the year 1200, as will anon appear. [Page 23.]

Thirdly, immediately upon his Divorce he married *Isabel* daughter of the Earl of *Engolisme*, who was his last wife ; for, she survived him ; and by her he had issue (as will be agreed by all) *Henry*, (afterwards King *Henry the Third*) *Richard*, Earl of *Cornwall*, (afterwards King of the *Romanes*) *Ioane* wife of *Alexander* the second, King of *Scots*, *Eleanor*, first married to *William Marshal* the younger, Earl of *Pembroke*, and afterwards to *Simon Mountford* Earl of *Leicester*, as also *Isabel*, who was sixth wife to *Frederick* the second, Emperour of *Germany*.

But King *John* marrying the said *Isabel* in the year 1200. could have no child by her old enough to be married to the said *Lhewellin* in the year 1204.

<sup>24</sup> Neither could *Ioane* the wife of *Alexander King of Scots* be the same *Ioane* who was wife to *Robert de Audeley*, for, she was wife to the said *Alexander* in the year 1221. as appears in your *Hist. Ant.* p. 60. and *Mat. Paris*, p. 313. n. 12. and died before her husband (say you) in the year 1236. and was buried at *London*; But, *Mat. Paris*, who lived in the same time with her (p. 468. n. 34.) tells you the very day of her death, and says she died in the year 1238. in *England*, and was buried at *Tarente*. But you in your 60 p. and *Mat. Paris*, p. 770. n. 39. do agree that the said *Alexander* did survive the said *Ioane*, and that he died in the year 1249.

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The only question then will be, Whether *Lhewellins* wife was King *Johns* legitimate daughter by his wife *Hawisia*? which if she was, then some of your Authors taking notice but of two daughters named *Ioane*, which the said King had, did thereupon mistake *Ioane* the wife of *Lhewellin*, for *Ioane* the wife of *Robert de Audeley*, and so did mislead several of our later Authors into the like error.

<sup>25</sup> Sure I am, that *Mat. Paris*, who was contemporary with the said *Ioane*, p. 231. n. 52. calls her *the Kings daughter*, without the addition of *Bastard*, or any thing tending thereto; His words are these, *Quo factō, venit aliis Nuncius ex parte filiae ejusdem Regis uxorū videlicet Leolini Regis Walliæ, &c.* Also in the reign of King H. 3. her son *David* is by him (p. 537. 569. and in many other places) stiled *Nepos Regis*, and p. 695. called *Nepos Regis ex Sorore*, and p. 570. he is said to be *propinquus Regi consanguinitate*. Also *Knighton*, col. 2417. n. 42. thus says of her, *Rex Johannes dedit filiam suam Leolino Principi Walliæ in uxorem, & cum ea dedit castellum & totum territorium de Ellefsmere in*

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*confinio Walliae.* And the King himself in the aforesaid *Record* gives her the title of *filiæ nostræ*.

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Also in *Lib. Barlings* (in which Book besides what concernes the Abby of *Barlings* in *Lincolnshire*, there are certain *Annals* (beginning *An. 1050.* and ending *An. 1231.*) she is called the said <sup>26</sup>Kings daughter, without the Addition of Bastard; For, as I am informed by a judicious person, who, at my request did lately search the said Book in Sir *John Cottons* Library, these words, *Lewelinus disponasavit filiam Regis I.* are the only words, *fol. 22. b.* which concern the said matter: And yet you, in the 2d. *Page* of your *Addenda* do say, *That the said Joane Lib. Barlings, Fol. 22. b. is acknowledged and called base daughter of K. John.* I hope therefore the Reader will take heed how farr he gives credit to what you say.

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Neither have I as yet found any Author who lived in that Age with her, who hath said she was a Bastard; Indeed, our later Authors as *Vincent* and others, who say that she was illegitimate, do many of them say, That King *John* was divorced from his second wife, as well for that she was barren, as within the degrees of consanguinity, which barrennes, if it could be made to appear, would certainly prove the said *Ioane* to be a Bastard; And, this opinion hath so far prevailed in this last age, that whereas learned Mr. *Cambden*, as <sup>27</sup>you may see in his *Britannia* in Latine printed at *London 1607. p. 259.* speaking of the Divorce of the said *Hawisia* (whose name he mistakes and calls *Isabel*) doth only use these words *illam repudiatam*, Doctor *Philemon Holland* in the English Translation (unjustly) renders it thus, *That King John did repudiate her upon pretences, as well that she was barren, as that they were within the prohibited degrees of consanguinity.* But our antient Historians say nothing of her being Barren.

For this see *Hoveden* (who was living all the time that *Hawi-*

*ha was wife to K. John) p. 803. n. 34. in the year 1200. Eodem Anno factum est divorcium inter Johannem regem Angliae et Hawisam uxorem ejus filiam Willielmi comitis Gloucestrriæ per Heliam Burdegalensem Archicpiscopum, & per Willielmum Pic-tavensem, & per Henricum Sanctonensem episcopos: erant enim affines in tertio gradu consanguinitatis. Facto itaq; Divortio inter Johannem regem Angliae, & uxorem suam, ipse Rex Angliae consilio domini sui Philippi regis Franciæ duxit sibi in uxorem Isab-<sup>28</sup>bel filiam Ailmari comitis de Engolismo, &c.*

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So also *Mat. Paris* (living in the time of the said *Ioane*) p. 200. n. 23. in the said year 1200. *Eodem tempore celebrato Divortio inter Regem Anglorum & uxorem suam Hawisam comitis Gloverniæ filiam, eo quod affines erant in tertio gradu consanguinitatis. Duxit idem Rex, consilio Regis Francorum Isabel filiam comitis Engolismi.*

So also *Mat. Westminster* in that Edition printed at London, 1570. lib. 2. p. 76. n. 25. *Anno gratiæ. M.CC. Rex Johannes Isabellam filiam comitis Engolismi duxit in uxorem & Dominica proxima ante festum sancti Dyonisi consecrata est in reginam ab Huberto Cantuariensi Archiepiscopo, quia celebratum fuit divorcium inter ipsum & Hawisam comitis Gloverniæ filiam, eo quod contingebant se in tertio consanguinitatis gradu.*

Now certainly these antient Authors must needs in this point be credited before those that lived so long after them, and especially since all those that I have <sup>29</sup>met with who say she was barren, or do call her a Bastard, do not one of them know her true Christian-name, but are either silent therein, or else (which the most of them do) do call her *Isabel* instead of *Hawisa*.

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See also the words of *Rad. de Diceto* (who lived in the time of the said King *John*) col. 706. n. 5. which words are these, *Celebratum est divorcium inter Johannem regem Angliae & filiam comitis*

Glocestriæ in Normannia, ab episcopis Lisoriensi, Baiocensi, Abrincensi, & aliis episcopis qui interfuerant, quam ipse tempore patris permissoне Romanæ ecclesiæ duxerat in uxorem cum Comitatibus de Glocestria, de Sumerfatum, de Devenesire, de Cornwaille, et aliis quamplurimis per Angliam honoribus. Set ille sublimioris thori spe raptatus, consilio pravorum eam abegit, unde magnam summi Pontificis scilicet, Innocentii tertii, et totius curiæ Romanæ indignationem incurrit, præsumens temere contra leges et canones dissolvere quod eorum fuerat auctoritate colligatum.

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<sup>30</sup> And now let any man judge, if she had been barren, whether that would not have been alleagded as a caufe of King Johns putting her away, as well as his desire of matching into a more sublime family ; So that I see no reaſon to conclude the said *Ioane* to be a Bastard, until it be proved that she was so, by ſome Record, Deed, or good Author who lived in that Age, and especially ſince the ſaid *Hawifa*'s daughter (if ſhe had one) might very well be old enough in the year 1204. to be married to the ſaid *Lhewellin* Prince of *North-Wales* ; But it is not material to the caſe in hand, whether the ſaid *Ioane* was a Bastard or not, Because all the Gifts you mention in your *Addenda*, were either not gifts *in free-marriage*, or elſe were not given to the ſaid *Lhewellin* with the ſaid *Ioane*.

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As to what you ſay in your 7 *Page*, I did in my former Book give you ſeveral Reasons, why the words of *Glanvil* did not prove what you ſuppoſed they did, and in the 38 and 39 *Pages* of my *Reply* did tell you how you had left <sup>31</sup>them unanswered, and did also there inform you, that Mr. *Glanvil* did not ſay, That Lands might be given with any woman *in liberum maritgium*, but only *in maritagium* ; and yet after all this, you have the confidence to father upon Mr. *Glanvil* what he never either meant or faid.

In your 8. *Page*, you ſay I have charged you with *many absolute*

*untruths and gross absurdities, and in stead of modest and clear Answers to the very point or hinge of the controverſie, did burst out into extravagant expressions in things upon the By, which gives you occasion to imagine that I think my cause declining.* But thoſe, and ſeveral other of your expreſſions, ſeeming to proceed more from paſſion then reaſon, I ſhall at preſent paſs them by, and do not doubt, but I ſhall be able to clear my ſelf, from any thing which you have or can particularly charge me withal; And whereas you pretend that my confidence did arife, *because you are tied up by your Promise to write no more touching Amicia.* I will affure you I received no encouragement thereby, for I do not take you <sup>92</sup>to be ſo great a Bug-bear as you ſuppoſe your ſelf to be; And if I had relied upon your promife I had been muſtaken, but I did very well know what you meant to do, for (besides what I heard from others) the ſame day my *Reply* was finished, you did write a Letter to me, wherein was your pretended new precedent of *Budeford* and *Suttehal*, and before any part of my laſt Book was printed, I received notice from your ſervant by your command, that *you would print ſome precedents as Addenda to your former Book*, but it ſeems that resolution, as also another, (as I was informed) of writing an *Answer* in a third persons name, were both laid aside, and what you did came out as *Addenda* to your later Book; But how, in ſo doing, you were just to your word, I cannot imagine, for, what you did write till the end of the 7. *Page*, did all concern *Amicia*: and, by the ſame reaſon you did write now, you may write alwayes, and ſay you do ſo as *Addenda only* to your fecond Book.

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In your 9 *Page* you again tell me, That I begin my *Reply with an untruth*, <sup>93</sup>because I ſay, that thoſe of our County who are understanding perſons will eaſily diſcern from ſome of your Omissions, that it was ſomething else besides your great love to truth which occaſioned you to Asperfe your deceased Grandmother, and you tell me I might have done well to have ſhewed; To which I anſwer, that I will not reflect upon perſons in print,

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but if any one desire privately to know what those Omissions were, if I cannot give full satisfaction of your gross partiality, let me bear the blame: And, I know no reason, since you pretended it was your great love to truth which did occasion you to Write against *Amicia*, but that I might in general termes let the World know it was something else which moved you so to do; and I will appeale to the Reader, whether I did not avoid all offensive expressions in what I said.

In your 10. *Page*, you are also over-captious; For I having found in your *Historical Antiquities* two Deeds made by *Randle de Gernoniis* father to *Hugh Cyveliok*, (in the time of which *Hugh*,<sup>34</sup> *Raph Mainwaring* was justice of *Chester*) and those two Deeds being directed *Justiciariis*, although I know of none who can tell the name of any more then one of them; I did therefore, lest there should be two Justices in the time of the said *Raph*, in my first Book call him *Chief Justice*, because he acted alone, but did withal in my second Book acknowledge, that I had not found that there was then any other Justice in the time of the said *Raph*, and for this, you tell me I should have been more ingenuous, and do say, *I do very well know that there was no other Judge of Chester at that time*, which being a Negative, it is impossible for me to know; Also, as you may see in *Monasticon Anglicanum*, Part 3. p. 97 & 226. and in your *Hist. Ant.* p. 130. & 131. there was in the time of the said Earl *Hugh* sometimes two Justices of *Chester*, and sometimes but one; So that there possibly might be another Justice of *Chester*, when the said *Raph* was Judge there: And whereas you give a glance at my vain-glory, by pretending *you are loath to say it was so*: I desire to know how I could possibly be vain-glorious therein?<sup>35</sup> since it was full as honourable for the said *Raph* to be sole Justice of *Chester*, as to be *Chief Justice* in case there were two.

In your 11 and 12 *Pages*, you deny that you said that *Geffrey Dutton* was witness to his own Deed or Deeds, but to the Deeds

of others, and say, it was my gross mistake in saying so ; But, if any persons read the 4 and 5 *Pages* of your *Answer* to my first Book, they may easily see that you apply the words *Domino Galfrido de Dutton* in that Deed of *Tabley* to that *Jeffrey de Dutton* who made the said Deed, and they will also find you saying, *That in several other Deeds of the same person* (meaning still the same *Geffrey*) *you dare affirm among the witnesses subscribed he hath five times and more the word Dominus omitted, for once that we find it prefixed to his name.* Let the Readers therefore (if they can) find out, how you could imagine his name to be at any time amongst his own Witnesses, if you did not take him to be a Witness to his own Deeds.

<sup>36</sup> You also in the same *Pages* of your *Addenda* say, *That if he had been a Knight he would have called himself by his Title, Ego Galfridus de Dutton Miles*; or, *Ego Dominus Galfridus de Dutton dedi, &c.* But, this is directly contrary to what you did write at the bottom of the 5. *Page* of your second Book ; and it is well known, that in very antient times, every one who was a Knight, did not alwayes give himself the Title of *Miles* or *Dominus* in his own Deeds, neither had he alwayes the same Title given to him by others, which, if occasion required, I could make to appear.

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You also tell me, that when I say *That Dominus Galfridus de Dutton witness to the other Geffrey Duttons Deed of Nether-Tabley was his Father, it was my gross mistake*, For it was Geffrey Dutton of Chedle. And you also say, that **there were four Geffrey Duttons, two of Budworth, Father and Son, and two of Chedle Father and Son, much contemporary** ; and for the proving of those two of *Budworth* (those of *Chedle* being not there named) you send me to <sup>37</sup>your Book of *Antiquities*, *Page 226. there to be informed of what (you say) you see I do not know.* But, if I did not know of those two *Geffrey Duttons*, how could I tell you in the 10. *Page* of my

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*Reply that Adam de Dutton had issue Sir Jeffrey, who had issue Jeffrey who made the said Deed of Tabley? or, How could I say that Jeffrey the Father was a Witnes to that Deed? and, How doth it yet appear that the Dominus Galfridus de Dutton, who was Witnes to the said Deed of Tabley was Jeffrey Dutton of Chedle, and not the other Sir Jeffrey Dutton of Budworth? For, though the year 1238. be the last time you say you met with him, yet, as appears in your Hist. Ant. p. 216. you have not seen the Deeds of Sir George Warburton, who is his heir-male; therefore the said Jeffrey might very well live on to be a Witnes to that Deed. But, whether the said Sir Jeffrey of Budworth the Father was then living or not, one of the Jeffrey Duttons of Chedle was also a Knight, as appears in your Hist. Ant. p. 206. (though you conceal it in your Addenda because you would have the Reader to believe there was no Sir Jeffrey Dutton <sup>38</sup>living when that Deed of Tabley was made) which will as well serve my turn; for, if Sir Jeffrey of Budworth was then dead, then the Domino Galfrido de Dutton is in that Deed to be applied to Sir Jeffrey Dutton of Chedle; And whilst they were both living, whensoever you find Domino Galfrido de Dutton among the witnesses, it is certainly to be applied to one of the Knights, and when you find Galfrido without Domino, it is as certainly meant of some Jeffrey Dutton that was no Knight.*

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And whereas you object, p. 13. *That Sir Jeffrey Dutton of Budworth must needs be dead, or else Jeffrey the Son could not have passed away those Lands.* That doth not follow, for I have known more then once, not only Sons in the life-times of their Fathers, but also Grandchildren, who have been possessed of Lands in their grandfathers time; And whereas you say that Margaret was daughter, but not Daughter and heir of Jeffrey Dutton; I cannot tell how that will appear without the sight of Sir George Warburtons Deeds; Because Sir Peter Dutton might be son to a Jeffrey Dutton, and yet be <sup>39</sup>Brother and heir-male to Jeffrey the Father of Margaret. But be it how it will, she

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having the Mannors of *Nether-Tabley*, *Wethale*, and *Hield*, it can be no groſs one, if it be any mistake at all.

In your 14 *Page*, you would willingly heal an expression in your former Book, by confessing it was too ſhort; but, to make amends for this, you now overdoe it; and because you would make us believe that you formerly meant as you now pretend, you ſay, that a little after, you did ſpeak of Knights who uſually ſtiled themſelves thus — *Ego Dominus A. B. dedi*, &c. or, *Ego Dominus A. B. Miles dedi*, &c. But, whoever can find thofe words in your *Answer*, can find out that which I am not able to do.

In your 16, 17 and 18 *Pages*, you keep a great ſtir about the word *domino*, when it is prefixed to any names in ſubſcriptions, and though you were willing in your laſt Book to call Sir *Raph Mainwaring*, Sir *Roger Mainwaring*, Sir *Thomas Mainwaring*, and Sir *William Mainwaring*, all of them Knights, yet now you are <sup>40</sup>diſſatisfied concerning all but Sir *Thomas Mainwaring*, to whose name in a Fine you find the word *Milite* added, and you would willingly iſſinuate that the *Dominus Willielmus Mainwaring* was he who was Parfon of *Wernith*, (though without any caufe as appears by the Deed wherein he is named.) And you ask me, whether I have any Deed of *Raph Mainwaring* Judge of *Cheſter*, with the word *Milite* added, which you well know that I have not, it being much, that I have thofe Deeds of his which I have, being he was Judge of *Cheſter* ſo long ſince, *viz.* in the time of *Richard the Firſt*; But, I pray you, Why is not the word *domino*, when prefixed to the name of a Witneſs who was not a Clergy-man, good proof that he was a Knight? (eſpecially ſince ſome who are likely to be the moſt ſkilful in thofe matters, are of opinion that it is.) And why, if it be not good proof, were you lately more complemenタル than you are now, and did break your old Rule of *Amicus Socrates*, *Amicus Plato*, &c. in calling *Raph*, *Roger*, and *William Mainwaring* Knights?

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Or, Why do not you prove the word *domino* prefixed to some persons name, <sup>41</sup> before he was made a Knight? Or, to one who was no Clergy-man, and but an Esquire, at the time of his death? Or, Why doth not the word *domino* prefixed to each of the aforesaid *Raph*, *Roger*, and *William Mainwaring* prove them to be Knights, as well as it doth prove one of the *Geffrey Duttons* of *Budworth*, and one of the *Geffrey Duttons* of *Chedle* to be Knights? For, you confess, *Page 13.* of your *Addenda*, that you do not remember any of them writing *Ego Dominus Galfridus Dutton, dedi, &c.* And, Why did not you answer the Question which I asked of you in the 16. *Page* of my *Reply*? viz. If the word *Dominus* do only signifie Master (as you would have it) What is the reason, that in some *Deeds* it is only put before the names of some of the witnesses, and not before the names of others? although those other persons to whose names it is not put, many times are *Lords* of several *Mannors*, and persons of very great *Estate*. And, What is the reason that you do not call all the four *Geffrey Duttons* Knights, as well as two of them? seeing in the 13 p. you say, You have (if you mistake not) seen them all sometimes subscribed with *Domino* <sup>42</sup>prefixed, but not any of them writing himself, *Ego Dominus, &c.* Or, How comes it to pass, that neither of the two Knights did ever write so, if what you say in your 11th *Page* be true? Sure the *Reader* will easily perceive, what strange work you yet make with these *Geffreys* and their *Deeds*.

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In your 18th *Page* you also say, That I fasten upon you another untruth, where I tell you, that you have seen the opinion of a Judge under his hand, with Reasons for the same touching *Amicia*. But, whether this be an untruth or not, let what you formerly sent me under your own hand determine, where you name the Judge, and also take notice that his reasons were given under his hand; Let me therefore advise you for the future to be more cautious what you write. And whereas you also say, That your memory is not so bad, but you could remember something of it, or his name; Let the Reader look in your *Hist. Ant.* p. 135. l. 3. and p. 136.

*l. 43.* or see your words in the 5 p. l. 15. and 12. p. l. 5. printed with my *Defence of Amicia*, and he will there find that you did know the Reasons of the said Judge.

*43* And whereas you pretend, *It was impossible for you to have alleagded to the two Heralds, the tenth part of what you could have done in so short a space;* I shall leave that to them, they being both yet living, as also whether they have found any thing in your former Books concerning *Amicia*, which they have not heard from you before. And as for your Lawyer of very good note, and good *Antiquary*, you do well in concealing his Name, But certainly he was very unkind that would not furnish you with some Precedents to make good what he said.

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What you say in the 20th *Page*, and so on to the middle of the 23 *Page*, shews clearly, that you are resolved not to be convinced ; For, when at the first I proved out of *Monast. Angl. Part 2. p. 267.* that *Richard Bacuns* Mother could not be *Hugh Cyveliok's* daughter, because it was *Randle de Gernoniis*, not *Randle Blundevil*, whom the said *Richard* called Uncle, in regard there was a *William* Archbishop of *York*, and one whose Name began with an *R.* which was then <sup>44</sup>*Bishop of Chester*, both living in the time of the said *Randle de Gernoniis* : but that there was no *William* Archbishop of *York*, during all the time of *Randle Blundevil*, nor any man Bishop of *Chester* whose name began with *R*, after the said *Randle Blundevil* could be old enough to seal a Deed, as also, because *Bacuns* witnesses were contemporary with *Randle de Gernoniis* ; You in the 54 and 55 *Pages* of your *Answer*, do not only say that you conceive the *Roll* from whence the Deed in *Monasticon* was written is mistaken in *Will.* and *R.* (which was a strange *Answer*) but you also say, *There was no such Archbishop of York called William, nor Bishop of Chester whose Christian name began with R. both living at one time, either in the time of Randle Blundevil or Randle de Gernoniis that you can find.* But when you perceived

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[Page 45.] that I had clearly proved by several Authors, that a *William* was Archbishop of *York*, and that *Roger Clinton* was Bishop of *Chester* in the time of *Randle de Geroniis*, so that you could no longer deny the same; You now in your *Addenda* would willingly avoid the Argument, because the said *William*<sup>45</sup> upon his first Election had not the *Pall*, which all that know any thing will easily perceive to be a very weak Answser; For he was consecrated Archbishop, and had possession of the Arch-bishoprick till after the deaths of Pope *Innocent* the Second, Pope *Celestine* the Second, and Pope *Lucius* the Second; And if he was reputed Archbishop, he would be called so, as well in Deeds as otherwayes: And it is no wonder, since he was looked upon by many to be the right Archbishop, and to be wrongfully suspended by Pope *Eugenius*, (as you may see in my *Reply*, *Page 77.* and so on to the *87. Page*) if some persons do name him according to the time of Election, and others according to the time of his Restauration, which doth reconcile those different placings which you mention in your *22 p.*

[Page 46.] And whereas you again object, That *Chester* was then within the Province of *Canterbury*, not *York*; I answered that in my last Book, where I told you that the Archbishop was not named upon that accompt, but because some of the places mentioned in the said Deed were<sup>46</sup> within the Province and Diocefs of *York*, as particularly *Rosington* was, it being within the Westriding of *Yorkshire*; And if that Deed was not directed to an Archbishop of *York*, How came the word *Eboracensi* there? But if you had foreseen I would have asked you this question, I doubt not but you would have said, *That the word Eboracensi was miswrit*, as well as the word *Will*, and the letter *R.*

In your *23, 24, and 25 Pages*, you are disingenious, and do not recite my Argument aright; For you pretend it only to lie in this, That *Hugh Wac* and *Richard Pincerna* (two of the Witnesses to *Bacuns* Deeds) were also Witnesses to a Deed made

*Anno 1152.* which falls in the latter end of the life of *Randle de Gernoniis*, whereas whoever will read the 88 and 89 Pages of my Reply, will find that I named five Witnesses of *Richard Bacuns*, viz. *Hugh Wac*, *Richard Pincerna*, *William Coleville*, *Thurstan Banaster*, and *William the Chaplain*, and also did instance in five Deeds to which *Randle de Gernoniis* was a party, to each of which, one, two, or three of the <sup>47</sup>said *Bacuns* said witnesses were also witnesses; and if you please you may also find a sixth Deed in *Monaſt. Angl. Part 1. p. 987. b.* and a seventh Deed in *Monaſt. Angl. Part 2. p. 260. b.*

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That which you did alleadg concerning two Deeds made at a great distance, is nothing like this Case; Neither is there any weight in *William Bacun's* being a witnes to a single Deed of *Randle Blundevils*, for, he might be a young Man when he was witness to *Richard Bacuns* Deed, and living to be old might be a witnes to one of *Randle Blundevils* Deeds, But it is probable he was Son, Grandson, or other Kinsman of the other *William Bacun*; But, you deal a little fallaciously with your Reader, when you say it was but Twenty nine years betwixt the death of *Randle de Gernoniis*, and the time that *Randle Blundevil* was Earl; For, though that be true, yet it would be a longer time before *Randle Blundevil* could be old enough to feal a Deed, for his Mother was but Twenty four years old when he came to be Earl.

<sup>48</sup>What you object, p. 26 and 27, concerning the Deed of Warranty of *Randle de Gernoniis*, or concerning *Richard Bacuns* being contemporary with *Randle Blundevil*, is sufficiently answered; For, Why might not the said Deed of Warranty be lost, as well as many thoufands of other Deeds are? And that *Richard Bacun* was contemporary with *Randle de Gernoniis*, I have abundantly proved. And though in your 27 Page, you would have *Bacuns* Mother to be *Hugh Cyvelioks* daughter, yet in the 25 Page you confess, that *it is probable she was a Baftrd*

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of Randle *de Meschines*, but finding that to contradict what you afterwards said, you have since the Printing thereof blotted it out of those Books which you have disposed of in these parts; And, although I do not see but that *Bacuns* Mother might be a lawful daughter of the said *Randle de Meschines*, yet I will not further engage in her defence, but pass by that, and the course language which you repeat at the latter end of your Book.

[Page 49.]     <sup>49</sup>I have now done with your *Addenda*, but since you have so abounded in that particular, I hope you will give me leave to add a word or two to what I have formerly said.

I have heretofore proved that the aforesaid *Bertred* was but Twenty four years of age in the year 1181, when her Husband died, by which it appears, that she was born in the year 1157. I do also find in the Third Part of Mr. *Dugdales Monasticon Anglicanum*, p. 226. that *Hugh Cyveliok* and his Mother *Maude* did give *Stivinghale*, with a Mill next the Park, and some other Grounds, to *Walter Durdent* Bishop of *Chester*, and his successors, to which Deed *Eustace* the Constable was witness; Now the said Earl *Hugh* being not in a capacity to seal a Deed until he was One and twenty years of age, and the said *Eustace* being slain (as appears by your *Hist. Ant.* p. 266.) in a Battel against the *Welsh* in the said year 1157. If the said Deed was made immediately before the said *Eustace* was slain, the said *Hugh* must needs be at the least One and twenty years ol-<sup>50</sup>der then his Wife *Bertred*; But, it is very likely that Deed was made some years before, viz. immediately upon the death of *Randle de Gernoniis*, For the said *Randle* died Excommunicate, and *Stivinghale* and those other Lands were given for his Absolution, and the health of his Soul.

But, besides what is here proved, if you look at the latter end of the *Welsh History* put out by Dr. *Powel* 1584, immediately before the Table, you will see that the 16 line of the 197 page of the said *Welsh History* is misprinted, and that in the said Page it

should have been Printed thus : **About the same time Hugh son to the Earl of Chester, fortified his Castell of Cymaron, and wan Melienyth to himself.** And you may also there find, that the time when the said *Hugh wan Melienith* was in the year 1142.

Now that this *Welsh History* is of good credit, I hope you will not deny ; For, in the 44 *Page* of your *Historical Antiquities*, you acknowledge, that in these *Welsh*<sup>51</sup> matters you chiefly follow the same ; And Dr. Powel in his Epistle, as also in his Notes on the said History, p. 206. tells us, That *Caradocus Lhancaruan* is reputed and taken of all learned men to be the Author of what is therein written, until the year 1156. And as you may find in *Vossius* his Book, *de Historicis Latinis*, p. 389. and in *Isaacksons Chronologie*, p. 323. the said *Caradocus* was living when the said *Hugh wan Melienith*.

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The only Question therefore is, Of what age the said *Hugh* then was ? And because that is uncertain, and that I am willing to reckon so, as may be most advantageous to you, I will suppose him to be then but Twelve years old, which is the same age that *Silvester Giraldus*, p. 203. fayes Prince *Lhewellin ap Forweth* was of, when he began to infest his Uncles, and is indeed as young, as I have observed any to appear in such Martial Affaires. Now, if we should believe that *Hugh Cyveliok* did Marry the said *Bertred* so soon as she was fourteen years of age, then the said Marri-<sup>52</sup>age would happen in the year 1171. at which time, if *Hugh Cyveliok* was born in the year 1130, and was but 12 years old when he wan *Melienith*, in the year 1142. yet he would be 41 years of Age when he Married the said *Bertred*. It cannot therefore be imagined, that so great a person should continue unmarried till he was above Fourty yeares old, or that he should Marry to his first Wife, one so much different from him in yeares ; But, when he had Marryed a former Wife, who dyed leaving him only a daughter or daughters, it is no wonder if in his age,

(Page 52.)

he Marryed a young Lady, to the intent he might have Issue-male to succeed him in so great an Estate ; I hope therefore, though you told me in the 49 *Page* of your *Reply*, *That you can gather no such quantity of years in respect of Hugh Cyvelioks age, reasonably to suppose him to have had a former Wife,* that these proofes will shew, that there were very many years betwixt them, and that thereupon you will be so reasonable as to believe [Page 53.] he had a Wife before he Mar<sup>53</sup>ryed *Bertred* ; And, if he had a former Wife, there would be no cause to suspect *Amicia* to be illegitimate, if your pretended Precedents had been such as you did untruly suppose them to be ; with which I will conclude what I have now to say, when I have subscribed my self

*Your Affectionate Cousin*

*and Servant,*

*Baddeley,*  
*Feb. 13.*  
*1674.*

*Thomas Mainwaring.*

Two Books :

The F I R S T being Styled

A R E P L Y  
TO

Sir **Thomas Manwaring's**  
Book Entituled,

A N A N S W E R  
TO

Sir *PETER LEICESTER'S*  
**A D D E N D A.**

The O T H E R Styled,

Sir *Thomas Manwaring's*  
**Law-Cases Mistaken.**

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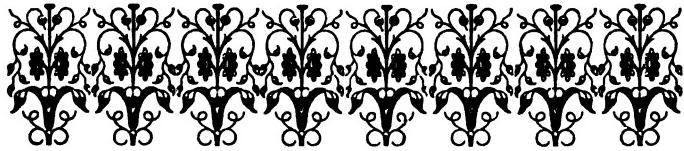
By the said

Sir *PETER LEICESTER*  
*Anno Domini, 1674.*

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Printed in the Year,  
M, DC, LXX, IV.





THE  
E P I S T L E  
TO THE  
R E A D E R.

**I** am, in the first place, to let thee Know, how it comes about that I now write again; contrary to what I formerly both intended and declared in the close of my Answer to Sir Thomas Manwarings defence of Amicia, [formerly Printed 1673, page. 79] where I said, that [I take my leave for ever of this trivial Controversy:] The Reason is, because I am now forced unto it by unhandsome Provocations: So that, although my Resolution then was, to have writ no more about it (especially if he had let me alone;) yet now, contrary to my former intention, I am necessitated hereunto in my own Defence; for the removal of those unjust obloquies which are since cast upon me: And which others (who know not the Truth) may think me guilty of, without due vindication both of my Self, and the Truth: nay, I am already taxed by him for not being just to my Word herein, in his Answer to my Addenda, pag. 32; though he very well knows, that I did omit many things in the same Addenda purposely in regard thereof: hoping that since I forbore to write against his Reply, onely answering some new Accusations laid upon me, that he would also have ceased from writing any more: yet he hath published another book since: and having therein taxed me already of

*not being just to my Word, I cannot now incur a greater censure herein, should I vindicate both the truth and my self to the utmost, by writing in my own defence as long as I shall judge it necessary: and I believe, none can justly blame me for it.*

*Wherefore I have now exposed two small books to thy view for clearing of the Truth; the one intituled—Sir Thomas Manwaring's Law-cases mistaken: The other—A Reply to Sir Thomas Manwaring's Answer to Sir Peter Leicester's Addenda: In which Answer I find much disingenuity, in palliating of Plain Truths, but rarely confessing any; resolving not to be convinced, but, like the Angry man in the Comedy, non persuadebis etiam si persuaseris.*

*I doubt not but he will say as much of my Reply, but, Reader, thou must be Judg: And I submit it to thee freely. If ever I deny a plain Truth or Reason, when it clearly appears, then blame me for it: Nothing can be true and false both at once, simul & semel: wherefore strength of Reason, by Argument and good Authority, must guide thee to incline to the one side or to the other: because two contrary Opinions in the same thing, cannot both be true: Then, Read thoroughly, and judge impartially. So, ingenuous Reader, Farewell.*

Mobberly.  
April 14, 1674.



'T O

[Page 1.]

Sir *Thomas Manwaringe,*  
Baronet.

SIR,



Ince I see, You resolve not to be convinced of your Opinion, notwithstanding the plainest truth of *Reason* and *History* produced ; but seek still to evade the same with seeming and very unsatisfactory Answers, and many impertinent Law-Cases, which either reach not those former Ages, or are else urged altogether impertinently by you, and are not to the point in hand : I have thought good, to shew your *Mistakes* in your late *Answer* to my *Addenda*; and by my *Reply*, to <sup>2</sup>pluck off the vizard which disguiseth the Truth.

[Page 2.]

The matter would sooner and better be determined by Arguing face to face before learned and judicious men, which would sooner bring us to the Point, and thereby avoid infinite impertinencies, which (I see) by writing do daily arise : And it seemeth necessary for me to print this *Reply*, lest you should say (as in the like case you have formerly said pag. 55. of your *Reply* to my *Answer*) that these Reasons also of yours are *unanswerable*: whereas those other, by you mentioned, were purposely omitted by me, as of no great moment to very wise men : and was indeed done, that we might not be endless in writing.

Wherefore, I have here collected all the material things in

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your *Answer to my Addenda*, where, by way of Reply, I shall shew all your *Errors* and defects in that *Answer*, as followeth : And that very briefly and plainly.

[Page 3.]

<sup>3</sup>Page 2. *Of your Answer to my Addenda.*

Here you say, you *cannot but smile that I still say, the Gift to Geva was such a Precedent*, considering how in your *Defence of Amicia* pag. 43, 44. &c. and also in your *Reply to my Answer* pag. 23, and pag. 45, 46. &c. you have made it to appear, that it is very uncertain, that *Geva* was a Bastard, but most certain that the gift to *Geva*, was not a Gift in *Frank-marriage*.

*My Reply.*

You may perhaps smile, as puft up in your vain conceit, in denying a plain truth, who is proved to be a Bastard out of an Historian contemporary : and therefore to what is said of *Geva* in your defence of *Amicia*, I shall refer the Reader to my *Answer* of that Book, pag. 33. and so onwards to pag. 47.

[Page 4.] And whereas you say, It is most certain that the gift to *Geva* was not a <sup>4</sup>*Gift in Frank-marriage*, I wonder at it, if you can english *in libero conjugio*; unless you think all Readers should be infatuated.

For, say you (in your *Reply to my Answer* pag. 55.), Those arguments of yours which I mentioned pag. 44. of my *Answer*, and pretended to be answered by me pag. 45, 46, 47. remain yet in their greatest strength, and are not at all answered by me : nay, the one of them is so far from being Answered by me, that it is not understood by me, unless I only pretend not to understand it, because I cannot give an Answer to it : And you rather think, that to be the truth of the Case, because I have not recited your Argument as you did expresse it : (what is this deep Argument?) namely, that my Lord *Cook* saith in his *Comment upon Littleton*, fol. 21. that these words [*in liberum maritagium*] are

such words of Art, and so necessarily required (in those kind of Gifts) as they cannot be understood by words equipollent: And there he gives the reason, that these words *in liberum maritagium* did create an estate of inheritance against the general Rule of Law: and therefore the Law required that it should be legally pursued: and, to explain this, he also said that, If a man give lands to another with his daughter *in connubio, soluto ab omni Servitio, &c.*: yet, there passeth in this case but an Estate for life: yet for all this I would not believe my Lord *Cook*, if he should have said the words [*in libero Conjugio*] do make but an Estate for life.

[Page 5.]

*My Reply.*

To all which I now answer: That the Lord *Cook* speaks there, of the Law of these later ages; and as the Law was taken in his time: for, if we understand it of the ancient Law in *Glanvil's* time, it is not true; and was not the Law at that time: neither doth the Lord *Cook* say, that was the Law in *Glanvil's* time; or, if he should have said it, none ought to believe it: for we see the gift to *Geva, in libero Conjugio*, did convey an estate of <sup>6</sup>Inheritance by those very words: and her heirs enjoyed the same. And it is ridiculous to say the contrary, namely, that these words *in libero Conjugio* created but an Estate for life in those ancient ages, since we see *de facto*, that those words did convey an estate of inheritance about the later end of *Henry the first*, or reign of King *Stephen*.

[Page 6.]

2. Again I say, that in those ancient ages the words *in libero Conjugio*, or *in maritagio* only, so as the lands were acquitted from all service towards the chief Lord, were then as good as *in Libero maritagio*: See the words of *Glanvil, lib. 7. ca. 18. Maritagium autem, aliud nominatur Liberum, aliud Servitio obnoxium: Liberum dicitur maritagium, quando aliquis liber homo, aliquam partem terræ suæ dat cum aliquâ muliere, alicui in maritagium; ita quod ab omni Servitio terra illa sit quieta, & à se & hæredibus*

[Page 7.]

*suis, versus capitalem Dominum, acquietanda : & in hac quidem libertate ita stabit terra illa usque ad tertium haeredem, nec interim tenebuntur haeredes inde facere aliquod homagium : Post tertium verò haeredem, ad debitum Servitium terra ipsa reveretur, & Homagium inde capietur.*

[Page 8.]

So that, Lands given in *Maritagium, Habendum sibi & haeredibus suis, libere & quiete ab omni Servitio versus Capitalem Dominum, de me & haeredibus meis*; this was a good Grant in Free-Marriage, by the very words of *Glanvil* in those ancient ages, and was as good as, *in liberum maritagium*: and, *in Conjugio, soluto ab omni Servitio, &c.* was then as good as, *in libero Conjugio*. But if the Grant were in these Words—*in libero Maritagio*: or, *in libero Conjugio*, then was it as good by the Law, as if the words aforesaid were expressed, and were included therein: nay, *in liberum Dotarium* was as good as either; which I have seen used in an old *Deed*, made in the raign of *King John*, wherein *Saher de Quency*, Earl of *Winchester*, granted to *Robert Quency*, his Son and heir, *ad dandum in liberum Dotarium Hawifæ Sorori, Comitis Cestriæ, uxori ejusdem Roberti*, the <sup>8</sup>*Mannours of Buckby, Granteſſet, Bradham, and Hardwick*. In one of the *Couchir-books* in the Dutchy-Office at *Grays-Inne, London*. Tom. 2. *Honor, five ſoca, de Bolingbroke*. num. 26. pag. 508. *in liberum Dotarium*, was the same as, *in liberum Maritagium*: for, in *Domesday-book*, *Dos* is called *maritagium*: Cook upon *Littleton* fol. 31. a. and *Glanvil lib. 7. cap. 1. Dos, quod vulgariter dicitur maritagium*. So that, the words *in liberum maritagium* were not in those ancient Ages so strictly required, as in later ages whereof the Lord *Cook* speaketh; nor, were those words so strictly then restrained, as no other words were equipollent; which the nicety of Lawyers in modern ages tyed up with more strictnes to it self, as a Term of Art, in thoſe Gifts of *Frank-marriage*: which kind of Gifts are now grown obſolete altogether, and out of uſe: and ſerve now only for *Moot-caſes*.

Nor, do we find any ſuch thing in all *Glanvil*, that, ſuch gifts were then tyed up to ſuch women only, as were of the Donour's

[Page 9.]

blood, but rather the contrary: For, *Glanvil lib. 7. ca. 1.* faith that, it might be given to any man with a daughter, or with any other woman whomsoever; without any restraint at all: whose words yet, you have endeavoured to restrain, by the words of some Lawyers of later ages: which you cannot justly do: for, what the Lawyers of late ages do take for law in their times, is a great *Non sequitur* to the Age of *Glanvil*.

Nor is it absolutely true, which the Lord *Cook* doth there say, that at this day the words *in liberum maritagium* have no other words equipollent: For then, a deed in English granting lands in Free-marriage, or a Deed in French *de terres en Frank-marriage*, would be void *Grants*: For, neither of these have in strict terms the words [*in liberum maritagium*;] and So, could not create an Estate of inheritance in themselves; contrary to what *Littleton* faith, *Sect. 17.* Wherefore certainly he understood it of a *Grant* in Latin: and so, *Free-marriage*, or *Frank-marriage*, seem to be in their kind Terms of Art, Equipollent herein.

<sup>10</sup> But let us now see, how you would prove the Gift to *Geva* in *Free-marriage*, to be no Gift in *Free-marriage*.

[Page 10.]

The Reasons you give in your *Reply* to my *Answer pag. 57.* And in your Defence of *Amicia pag. 49.* are these.

1. That the words *in libero Conjugio*, do there make but an estate for life, because the Lord *Cook* saith, that the words *in liberum maritagium* are such words of Art as cannot be expressed by words equipollent.

2. That the Deed to *Geva*, did intend no more than an estate for life, it running all along in the singular number, *Et teneat benē & in pace, &c.* and there being no mention of her Heirs.

3. The Deed to *Geva* is made to her alone, and not to a Husband with her: whereas the Lord *Cook* saith, that, one thing incident to *Frank-marriage* is, that it be given, in consideration of a marriage, either to a man with a Woman, or (as some have held) to a Woman with a man.

4. That the Donees [by the ancient <sup>11</sup>Law] were to hold freely of the donour to the fourth Degree: and here are no Donees, but one Donee.

[Page 11.]

To the First: You are horribly out, to say that, the words *in libero Conjugio* in the grant to *Geva*, did make but an estate for life; when we see *de facto* that they conveyed unto her an estate of inheritance: For the Town of *Drayton* was enjoyed by her heirs, the *Baffets*, by this very Deed in those very words: and it is apparent, that from the *Baffets*, sometime Lords thereof, it gained the name of *Drayton-Basset* for distinction, as even at this day it is yet called. And it is absur'd for any man to say, that, this Gift to *Geva* is not a Gift in Free-marriage: for, thus it runnes (only I render it in English) — *Randle*, Earl of *Chester*, to *William* the Constable, and *Robert* the Steward, and to all his Barons, &c. Greeting: Know ye, that I have given and granted unto *Geva Ridel*, daughter of Earl *Hugh*, *Drayton*, with the appurtenances in Free-marriage, even as Earl *Hugh* gave and granted the same to her in Free-marriage, &c. <sup>12</sup>See the Deeds at large in my Book of Antiquities pag. 112, 113. Now to say, This is not a Gift in Free-marriage, is to say, that, A Gift in Free-marriage is not a Gift in Free-marriage: which is very absur'd: But I suppose you mean, that this is not a *Good* Gift in Free-marriage, by Law, because the words are not *in libero matrimonio*, but, *in libero Conjugio*; for that, the Lord *Cook* faith, that no words can be equipollent to these — *in libero matrimonio*: Whereunto I answer, as I did before averr, That the Lord *Cook's* word's are to be understood of the Law as it stood in his time and in late ages: which are not true, if we understand them of the Law in the more ancient ages; as is very evident by this Grant to *Geva*, and also by *Glanvil* and *Braeton*: and you see, the Lands did passe accordingly.

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To the Second: The words [Frank-marriage] create an estate of inheritance in themselves by the Common-Law; although it be not exprefly faid in the Deed, To hold, to them and their heirs; *Littleton* Sect. 17. And <sup>13</sup>therefore the words, *in libero Conjugio* did not need the word [Heirs] to be expressed in the Grant: wherefore you do not say right, that the deed to *Geva* did intend no more than an estate for life: and especially, since

you see, that-Gift to *Geva* did convey an estate of inheritance thereby which did descend to her heirs ; choose whether you think it a good Deed, or a bad Deed.

To the Third : It hinders nothing, though the Deed be made to *Geva* alone, and that it runs in the Singular number : But, say you, How can there be a Gift in Free-marriage, where is no marriage at all ? and, how can there be a marriage if the man or Woman be alone ? It is true, that there can be no marriage, if the man or woman was never married, nor ever should marry : Yet there may be a Gift in *Frank-marriage* to one alone, as you see this was made to *Geva* alone, who had been, or was then again married : and she had also a former Grant in Free-marriage, which is mentioned also in this : And that probably did mention both her and her Husband : <sup>14</sup>But I cannot positively affirm it, because I never saw it : but certainly there was some reason for this later grant by Earl *Randle* unto her, for the conveying of *Drayton* to her and her heirs, or otherwise it would never have been made or desired : and *Braeton* saith, lib. 2. cap. 7. par. 3. Land may be given *alicui mulieri ad se maritandam* : and if it be granted, *sibi & hæredibus liberam ab omni Servitio, &c.* then was it a good grant in *libero maritagio*. How will you construe here *alicui mulieri ad se maritandam*, if Lands may not in this nature be granted in marriage to one Person alone ? The Law was not so curiously woven in those ancient Ages, as in the Lord *Cook's* time. But to deny, the deed to *Geva* to be no Gift in *Frank-marriage*, were to raise a dispute upon the Deed — Whether this Gift in *Frank-marriage*, be a gift in *Frank-marriage*, or no Gift in *Frank-marriage*? like the Gentleman who would needs dispute about a Crosse, & the Question must be — Whether that Crosse, was a Crosse, or no Crosse ?

To the Fourth. The heirs of the <sup>15</sup>Donee (being included in the Grant) are all Donees in Law : and shall be freed from all homage to the chief Lord, to the fourth degree, by the ancient Law, as both *Glanvil* and *Braeton* do tell us.

All this will not acquit *Geva* from being a Bastard (nor take

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off that Precedent (showing that lands did passe with Bastards in Free-marriage in those more ancient Ages) to the advantaging of the Case of *Amicia*, one jot : nor can these Bits of Law, ever find out a former wife to *Hugh Cyveliok*, which is the main point : and till this be done, *Amicia* will stand convict of Bastardy for want of Evidence.

The true reason why I did not in my *Addenda* meddle with the Answering of this point before, and other things, was, because of my former Resolution declared in the end of my *Answer*, where I took leave of this Trivial controversy for ever : which I did to avoid all further writing between us : but it would not be. For, by a *Reply* you fastened new Accusations and falsities upon me, and thereby forced <sup>16</sup>me to a Vindication of my self ; & those impertinent too, to the Point of the Controversy between us : And yet for all that, in regard of what I had before declared and intended, I passed by several errors and defects in your *Reply*, as I told you in the close of my *Addenda* : hoping hereby also, that it might have put an end to your writing any more, in regard I had first ceased in that point ; and being now only upon my own defensive part, yet I had in some things been defective in my own Defence ; (which yet I judged not so very material to the point) but this would not do neither : And after this, you have since published another book and forced me to this *Reply*, contrary to my former resolution and intention, whereunto I am necessitated for the removal of those unjust obloquies which you have again cast upon me, and which others (who know not the Truth) may think me guilty of, without the clearing both of my Self and the Truth : Nay in your answer to my *Addenda*, pag. 32. [Page 16.] you have already taxed me for <sup>17</sup>not being just to my Word ; So that, I cannot now incur a greater censure from you herein, though I alter my former resolution and intention, and write in my own defence so long as I shall henceforth judg it necessary : and I think no man can justly blame me for it : And now I proceed in my *Reply* to your *Answer* to my *Addenda*.

[Page 17.]

*Pag. 3. Of your Anfwer to my Addenda.*

Here you say, that I erre in saying that, the wife of *Lewellin* was *Joan*, daughter of King *John*; by *Agatha de Ferrars*, daughter of the Second *William de Ferrars*, Earl of *Darby*: where pag. 4, 5. you further prove by comparing the Age of *Bertred*, that *Agatha* could not be daughter to the Second *William de Ferrars* by *Agnes* his Wife.

*My Reply.*

This is not my error, if it be an error: for I only vouch what *Vin-<sup>18</sup>cent* faith: therefore all rational men will impute the error to him, and not to me: and I believe, *Vincent* is mistaken therein: which he might easily be, in taking her to be the daughter of the Second *William de Ferrars*. *Speed*, in his History pag. 518, calleth her, daughter of *Robert de Ferrars*: However it is said by our Historians, that *Agatha de Ferrars* was Paramour to King *John*, and mother to *Joan*, wife of *Lewellin*, Prince of *Wales*: whether she was daughter to *Robert de Ferrars*, or the first *William de Ferrars*, Son of *Robert*; it matters not.

[Page 18.]

All I here look after, is, that *Joan* (base daughter of King *John*) was wife of *Lewellin*, Prince of *Wales*, and mother of *Helene*, wife of *John the Scot*, Earl of *Chester*: against which, nothing can be rationally said, and, whether *Joane* was married *Anno Domini 1204*, or *1205*. as *Cambden* [in *Shropshire*] voucheth it out of an old Chronicle of *Cheshire*; it matters not: The Church of *England* computes the year of our Lord to begin the 25. day of *March*, and so you reckon the date <sup>19</sup>of the Writ to fall in *anno 1204*: Yet our Ancient Historians begin the year usually on the first of *January*, commonly called *New years-day*; and so the date of the Writ will fall in *anno. 1205*; as it is in *Cambden*: And it is not a Pin matter, which way soever we reckon, nor, whether in the one year, or in the other.

[Page 19.]

And here I will joyn issue with you to the point in hand :— Whether *Lewellin* married *Joan*, base daughter of King *John*, or no? I affirm it.

*Pag. 6, 7. Of your Answer to my Addenda.*

You tell me here, that, I am guilty of a third error in pretending that King *John* gave the Lordship of *Ellesmere*, in *libero maritagio* with his daughter *Joan*: For the Authors, by me produced, as well as the Record of 6. *Johannis* by you produced (being, the precept to make livery of *Ellesmere*, directed [Page 20.] to the Sheriffe of *Shropshire*; dated at *Worcester* 23. <sup>20</sup>*Martij.* *ex Rot. clauso de anno Sexto Regis Johannis; Membrana 7*) do only say, that it was given in *maritagio*: And then you say, To argue that *Ellesmere* was given in *maritagio*; ergo, it was given in *libero maritagio*; is very irrational: and you distinguish between them, and say, that, Lands may be given in *maritagio* to one that is not of the blood; but, Lands cannot be given in Free-marriage, but with one that is of the whole blood; neither can they be so given unlesfs the word *liberum* be used as well as the word *maritgium*: and so, you refer us to *pag. 39, 40.* and *pag. 56, 57.* of your *reply* to my *Answer*.

*My Reply.*

Here, you would distinguish between *maritgium* and *liberum maritgium*: and say, *Maritgium* is twofold: but do not give the members of your Distinction aright: for, a good Logician would tell you that the members of a good Distinction must be <sup>21</sup>opposite: and not, as you here distinguish, *Maritgium est duplex; vel maritgium, vel liberum maritgium*: the members are here coincident: for, *liberum maritgium est maritgium*: *Glanvil's* distinction is good; *Maritgium est, vel liberum, vel Servitio obnoxium*: So that, *maritgium* the *Genus*, comprehends the members, and both opposite one to another, as, either [Page 21.]

Free-marriage, or not Free-marriage : In his time, there was no such thing, as Free-marriage to be tied up to one of the whole blood, nor yet to those words *in libero maritagio* : this is a Law of a later stamp ; which I have before clearly proved. *Maritagio* was often in those ages, understood for *libero maritagio*, both by Historians, and in old Deeds, especially where, by the words of the Deed, it was freed from all Service, and therefore your distinction here is frivolous.

<sup>22</sup> *Pag. 7. Of your Answer to my Addenda.*

[Page 22.]

There you say further, that, If the Gift of *Ellesmere* had been given *in libero maritagio* with *Joan* base daughter of King *John*, unto *Lewellin*; yet, this would have stood me in no stead : (why so ?), because *Cook on Littleton* fol. 21. b. saith, that, if the Donee in a gift of *Frank marriage*, that is the cause of the Gift, be not of the blood of the Donour ; yet, there may passe an Estate for life if livery be made, as in this case it was : and then you insinuate this case of *Ellesmere* to be but an estate for life, because you read in *Powel's notes on the Welsh History* pag. 306. and *Mathew Paris* pag. 625, 626, that, though *Elesmere* was enjoyed by *Lewellin*, yet it was not long enjoyed by his Son *David*.

*My Reply.*

I wonder you should so often bring in such impertinent Peeces of Law : For, I have told you over and over again, that *Joan* (who was the cause of the gift) was of the blood of <sup>23</sup>the Donor, for she was his Bastard-daughter : and I have elsewhere proved out of *Braeton*, that, in those elder Ages, Bastards were reputed of the Blood : and now you would insinuate, this to be but an estate for life by a *Circumquaue* of the livery made : And see, how fallaciously you deal with the Reader, and say, it was but an estate for life, because it was not long enjoyed by *David*:

[Page 23.]

[Page 24.]

Doth not *Mat. Paris* in the place alledged set down the deed and Agreement between King *Henry*, and *David*, dated 25. *Hen. 3?* wherein *David* granted *Ellesmere* to King *Henry* and his heires for ever: So that it reverted not to the King as an estate for life, as you go about to deceive the Reader; but, by vertue of that special Deed and Agreement mentioned by *Mat. Paris*: for, without that grant it could not have reverted to the King, because it was an estate of inheritance, and not (as you unhandsomely suggest) an estate for life only; for *Joan* was dead before this Deed was made, at least four years; and <sup>24</sup>King *Henry* her Brother would have seized it as his own right upon her death, if it had been an estate for life onely: and *Lewellin* was also dead a year before: and what needed this Covenant and Grant from *David* of *Ellesmere*, if it were the right of King *Henry*, before that Agreement made? So that it was certainly an estate of inheritance in *Joan*: and whereby you may also see that the word *maritagio* (mentioned in the Record of 6°. *Johannis*, which you keep such a stir about) doth there clearly include an estate of inheritance by that word in the Writ of livery touching the lands of *Ellesmere* aforesaid, and the words of *libero maritagio* could have done no more. So that you are grofily mistaken herein, and your Law-cafe impertinently urged.

*Pag. 8, 9. Of your Answer to my Addenda.*

[Page 25.]

Here you say, that, the Deed of *Budiford* and *Sutchele* doth not say <sup>25</sup>that they were given by King *John*, *cum Johann& filia f&uacute;*: you say also, that my conceit that *Lewellin* could not have a former wife [to that *Joan*] unless she were another daughter of King *John*, is a very wild one.

*My Reply.*

As to the *First*: It is nothing but a meer cavil: for the words *cum Johann& filia f&uacute;* are by common intendment so to be un-

derstood, and are as strongly there implyed, as if they had been expressed in the Deed; because *Lewellin* never married any other daughter of King *John*, save only the said *Joan*, whereby he might have those Lands in *Frank-marriage* given by King *John* with any other, either daughter, or Kinswoman.

As to the *Second*, It is a mere mistake, which you in your wild Phansy suppose of me: for I never conceited or said any such a thing: I said that *Lewellin* never married any other daughter of King *John*, save only the said *Joan* his Bastard-<sup>26</sup> daughter: so that *Lewellin* could not have those Lands in Free-marriage with any other daughter of King *John*: I wish, I might but live so long in health and happines, till either you, or any body else, could prove it: or yet till you could prove, that *Lewellin* married any other Kinswoman of King *John* besides, with whom King *John* gave unto him the Lands of *Budiford* aforesaid: and you confesse pag. 9, that *Lewellin* married a daughter of King *John*, named *Joan*; and but one daughter of his: but not that *Joan* which I suppose: that is as much as to say, not *Joan* his Bastard daughter: then certainly all those ancient Authors by me cited are mistaken; and whether it be more likely, that these all do erre, or you who prove nothing to the Contrary, let the Reader judge. What followes in the ninth Page of your book, is very impertinent to the Point and wild.

[Page 26.]

<sup>27</sup> *Pag. 10, 11, Of your Answer to my Addenda.*

[Page 27.]

Here you go on and say, pag. 10, that those Authors (cited by me in my *Addenda*) and some others do all tell us of Lands given by King *John* to *Lewellin* with his daughter *Joane*; but none of them do say, that these Mannours of *Budeford* and *Suttehal*, or either of them, were given with the said *Joane*.

2. And then you say pag. 11. That our best Authors who tell us of the Children of *Lewellin* by the said *Joane*, do only name one son called *David*, and two daughters; *Marret*, married to *John Bruse*; and *Gladys*, wife of Sir *Rafe Mortimer*; but none

of them nameth *Hellen*: So that it seems, *Hellen* was no daughter of his by the said *Joane*.

*My Reply.*

To the *First*: I pray you see the weakness of this Reason: [Page 28.] for though <sup>28</sup>those Authors knew of those Lands given in marriage with her, namely *Ellesmere*, which they do mention; yet they might not know of these other Lands to be given in Free-marriage, namely *Budeford* and *Suttehall*: which yet clearely appears in the Deed of *Lewellin* unto *John Scot*: See my *Historical Antiquities*. pag. 152.

To the *Second*: Those best Authors (as you call them) is only the Welsh History with *Powel's Notes* thereon, pag. 298, and pag. 315. which indeed are pittiful Authorities, and very often grossly mistaken, as they be here also: but though these have omitted *Hellen* altogether, yet *Vaughan* in his *British Antiquities*, pag. 29. tells us of her, out of an old Manuscript, the words whereof are these — *Lewellinus Gervasij filius* [that is, *Lewellin ap Iorwerth*] *Princeps Walliae, primò desponsavit Tanglwyst, filiam Lhwarzch Vychan\** (who was Lord of Anglesey) *de qua genuit Griffith & Gwladus ddu, quondam uxorem Radulphi de Mortuo mari: Post mortem* <sup>29</sup> *dictæ Tanglwyst, idem Lewelynus desponsavit Johannam, filiam Johannis Regis Anglie, de quā genuit David, Principem; & Gueniant uxorem Johannis Lacy Comitis Lincolnie, & Angharad primò desponsatam Johanni de Brewis Domino de Brechon; post cuius deceßum, desponsata fuit Malgoni Vachan ap Maelgon ap Rees, & ex eadem uxore genuit filiam quæ maritata est Johanni Scoto, Comiti Cestria, qui fuit nepos Ranulphi Comitis Cestria ex parte Sororis suæ.* The name of this daughter was *Helene*, as appears by the Deed of *Lewellin*: *Mat. Paris* also, and *Knighton*, do tell us that *John Scot* married the daughter of *Lewellin*: And, that she was daughter of *Lewellin* by the

\* See pag. ult. of this Book.  
Milles in his Catalogue of Honour pa:  
387, calleth her  
*Tanglofta* daughter  
of *Lloirch ap Brooi*  
of Anglesey.

*Mortuo mari: Post mortem* <sup>29</sup> *dictæ Tanglwyst, idem Lewelynus desponsavit Johannam, filiam Johannis Regis Anglie, de quā genuit David, Principem; & Gueniant uxorem Johannis Lacy Comitis Lincolnie, & Angharad primò desponsatam Johanni de Brewis Domino de Brechon; post cuius deceßum, desponsata fuit Malgoni Vachan ap Maelgon ap Rees, & ex eadem uxore genuit filiam quæ maritata est Johanni Scoto, Comiti Cestria, qui fuit nepos Ranulphi Comitis Cestria ex parte Sororis suæ.* The name of this daughter was *Helene*, as appears by the Deed of *Lewellin*: *Mat. Paris* also, and *Knighton*, do tell us that *John Scot* married the daughter of *Lewellin*: And, that she was daughter of *Lewellin* by the

said *Joane* daughter of King *John*, is proved by the Manuscript vouched by *Vaughan*. Therefore you are much mistaken in saying, She was no daughter of *Lewellin* by the said *Joane*.

<sup>30</sup> *Pag. 11, 12, of your Answer to my Addenda.*

[Page 30.]

Here the Summ of what you say is this: that, because the said *Lewellin* married the said *Joane* in the year 1204, the said *Joane* could have no child in all likely-hood old enough to marry *John the Scot*: why so? because *Knighton pag. 2430* saith, that the marriage of *John the Scot* and *Hellene* was agreed upon before *Randle Blundevil Earl of Chester* went into the Holy Land, in which year *Damieta* was taken: and this voyage of Earl *Randle* is by *Matthew Paris* recorded to be in *anno Domini 1218*. And then, if *John the Scot* was married before, it must be in *anno 1217*. So that *Joan* in that year could not have any child above twelve years of Age.

2. And then you adde, that though I pretend that *John the Scot* did marry the said *Helene* about the year 1222; yet I do that, because she could not well be marriageable till a-<sup>31</sup> bout that time, if her mother had been married in that year, which I falsely supposed she was.

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### *My Reply.*

You here in the first place untruly suppose *John the Scot* to marry *Helene, anno 1217*: And you mistake your Author most grossly.

For, *Knighton pag. 2430* doth not say, that the marriage of *John the Scot* was agreed on before Earl *Randle* went into the holy Land: His words are these—*Ranulphus, comes Cestria, postquam concordatus est cum Lewelino Principe Walliae, profectus est Ierosolymam; & capta est Damieta a Christianis.*

Here was a Peace concluded with *Lewellin* before Earl *Randle* went to *Jerusalem*: not a Syllable yet about any Agreement

[Page 32.] concerning *John Scot's* marriage : and I acknowledge that Earl *Randle's* voyage was in *Anno 1218*, in which year *Damieta* was taken : for, I find it so recorded by *Mathew Paris*, who was an exact obser<sup>32</sup>ver of the year, in all transactions : but, admit all were true you say, Why might not *Helene* be married at the Age of twelve years, since you have a Precedent among your own Deeds shewing, that *Foane* daughter of *William Manwaring of Over-Pever* was married unto *William Legh of Baggiley* when she was but five years old ? See my *Historical Antiquities* pag. 217.

2. As to the *Second* ; You speak untruly of me, to say, I pretend the marriage of *John the Scot* with *Helene*, to be about the year 1222, which (say you) I did because she could not well be marriageable till about that time : whereas I here protest, that I took my Authority for it from *Knighton*, whom I vouch'd in my Book of *Antiquities* pag. 152. (which I take to be the place you speak of) and that when I writ the same I had not any consideration at all of the time of her mother *Foane's* marriage, which was then altogether unknown unto me, as at that time having no occasion to enquire after it : which yet you say was falsly supposed by me about it.

[Page 33.] <sup>33</sup>But for my observation of the time of *John Scot's* marriage to be about 1222. it is very truly obserued by me from *Knighton* pag. 2430 : For if we regard the Series or Order of his History, it is very plain : although *Knighton* doth not for the most part put down the year, but very oft omits the same.

First then, observe, he there tells us that the peace with *Lewelin* was made before Earl *Randle* went to *Jerusalem*, in which 1218 year *Damieta* was taken : now he omitteth the year in the Margent ; which yet by *Matthew Paris* is recorded sub anno 1218, when *Randle Earl of Chester* took that Voyage.

Then immediately follows in *Knighton* — *Hoc anno* (and yet no year put down in the Margent here neither) *Rex Henricus incepit 1220 novum opus apud Westmonasterium* : & *Ranulphus, Comes Cestriæ, rediens de terrâ sanctâ adificavit Castra de Chartley, & Beeston, & Abbathiam de Deulacres albi Ordinis, &c.* Now

the year of the New work of the Kings Chappel at *Westminster*,  
is also <sup>34</sup> Recorded by *Matthew Paris, sub anno 1220.*

[Page 34.]

And then soon after, he tells us, that *Alexander King of Scotland* married *Joane* sister of King *Henry*: and this also hath the year omitted by *Knighton* in the margent: which yet is also recorded by *Matthew Paris, sub anno 1221.*

And then immediately after it follows in *Knighton* — *John Scot* married the daughter of *Lewellin*, Prince of *Wales*, as for a final concord and Peace between *Lewellin* and *Randle Earl of Chester*: here is also omitted the year in the Margent: which yet by the series of his History falls in *anno 1222.*

Then it immediately follows thus — *John King of Jerusalem* came into *England* for succour for the holy Land: and this also hath no year put down: but *Matihew Paris* <sup>1223</sup> records the same, *sub anno 1223.*

So that, if we mark the series of his History, as it were digested into annals throughout; it shows plainly, the marriage of *John Scot* and *Hellen* <sup>35</sup>to be *anno 1222*: which was two years after *Randle Earl of Chester* was returned back out of the holy Land: and by this marriage was a new and firm Peace as it were established between *Lewellin* and *Earl Randle*; as a final Ratification of the former Peace made before *Randle* went into the holy Land:

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So then it is clear, that *John the Scot* married *Hellen, anno 1222.* and not as you erroneously suppose *anno 1217*: which Argument of yours is a very weak one in it self (without these Proofs) against *Hellen's* being daughter of *Joan*, base daughter of King *John.*

*Page 13, 14, 15, 16, of your Answer.*

And now you come to a fourth Reason, which (you say) will absolutely clear the Point, that *Lewellyn* could not possibly have given the said Mannours in Free-marriage with his daughter *Hellen*, unless they had been given to the said *Lewellin* with a former wife (meaning a former wife before *Joan* <sup>36</sup>the base

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daughter of King *John*) and that the said *Helene* was the heir to that former Wife: Why so? Because when lands are given in free-marriage, the Husband hath not the inheritance of the Lands, nor so much as an estate for life therein unless he be Tenant by the curtesy of *England*: and I cannot pretend (you say) that the Law was differing in this point in elder ages from what it now is: and then you cite my Lord *Cook* upon *Littleton* fol. 22. a. and *Fleta lib.* 3. cap. 11. and also *Bration lib.* 2. cap. 11. and *Glanvil lib.* 7. cap. 18. and so conclude in your 16th. page, that it is clear that the lands which were given with the said *Helene* to the said *John the Scot*, were given to the said *Lewellin* with a former wife, who was Kinswoman to King *John* and mother to the said *Helene*, or else the Gift to *John the Scot* could not be good: and then you close with a *Circumquaque* of an — if the mother of the said *Helene* was dead at the time of the Gift to the said *John Scot*, then *Lewellin* being tenant by the curtesy of *England*, and the inheritance being in <sup>37</sup>the said *Helene*, he might passe away the Estate, &c.

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*My Reply.*

One would think now by your words, that you had knockt the matter dead with this Reason, which is but a Vizard to ignorant People, and easily pulled off by wise Men: and (like Rotten Stuffe) will fall in Pieces in the handling: And therefore, to blind the world, you bring in another Peece of Law by the head and shoulders (as you constantly do, and impertinently) as if you would prove this Point by Law, when you neither do nor can prove it, either by Law, History, or Reason :

And First, I grant all your Quotations, and what by those Lawyers is there said: But, that is not to the point in hand: for you run upon a false Ground, and suppose *Helene* daughter of a former wife, which I utterly deny, and have before proved to be daughter of *Joane* aforesaid, the wife of *Lewellin*, and daughter of King <sup>38</sup>*John*: *suprl pag.* 29. And by consequence, being

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daughter of *Joan* who was the cause of the Donation, the lands might lawfully passe to *Hellen* in Free-marriage according to the Lawyers by you cited: and so your Law-case herein (which is impertinently urged) is totally out of Doors: Wherefore, all wise men may judge, how absolutely you clear the Point, when you have not a word to the Point: and now I will joyn issue with you herein — Whether *Joan* base-daughter of King *John* was wife of *Lewellin*, and mother of *Helene*, I or no? I affirm it, you deny it.

Now to prove my assertion herein, I have produced *Polychronicon*, *Stow*, *Speed*, *Vincent upon Brook*, and may also add learned *Cambden* in Shropshire who citeth an ancient Chronicle of *Cheshire* for it, & *Daniel*, and *Milles*, and Sir *Richard Baker*, and *Fabian*, who do all call her Base-daughter of King *John*: some others, only daughter of King *John*: whereby you would now put me to prove it by an Author contemporary, who styleth her base-daughter: What though I <sup>39</sup>cannot? She is called so by an Author, who lived near 400 years ago: and the chiefest of our modern Historians do all call her so: but you will not be satisfied with sufficient and clear Authority, as in pag. 25, 26, of your Answer, you urge *Matthew Paris*, and the writ of *Livery de terris de Ellefmere*, 6° *Johannis*, which call her daughter only, as an argument that she was therefore no bastard: nothing was more usual, than in ancient Authors, & old Deeds, to have such stiled daughters without the addition of Bastard; and this you may see clearly illustrated in my Book of *Antiquities* pag. 137. whither I shall refer the Reader; and so can be no Argument of Legitimacy, especially where other Authors do plainly call her Bastard: And your denying of this, shows you to be no great Antiquary, or else disingenuous in making so impertinent an Argument to prove a Legitimacy, if you do know it: for, such proofs show her to be a daughter, but whether lawful or unlawful, it is no proof at all.

Again; I argue further, that it appears not at all by any Author or re-<sup>40</sup>cord whatsoever, that King *John* had any more

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daughters called *Joan*, but only two: *Joan*, his legitimate daughter, married to *Alexander King of Scotland at York, anno Dom. 1221.* this is recorded by *Mathew Paris pag. 313.* & I believe you will not deny this: Now this cannot be that-*Joan*, who was long before married to *Lewellin, anno 1204*, and was also yet living at that time when the said *Alexander King of Scotland* was married: and *Paris* in the place aforesaid calleth *Joan* the wife of *Alexander*, *Sororem Henrici tertij, seniorem*: for she was the daughter of King *John* by his wife *Isabel*: & then being married but *anno 1221*, cannot by any rational man be presumed to be so old as that-*Joan* who married *Lewellyn, anno 1204*: wherefore *Joan* the wife of *Lewellin* must be another *Joane*, and by some other woman besides his wife *Isabel*: wherefore it strongly inferrs, she must be daughter of King *John* by *Agatha de Ferrars*, as our Historians do tell us: or else must be proved to be his daughter by some other <sup>41</sup>woman, by better proof: and so by consequence was mother of *Helene*, unles you can find out a third *Joan* who was another lawful daughter of King *John* by his wife; and married also to *Lewellin*. Prove it without *Ifs* and *Ands* (as we say), and take it: or else ingenuously confess, that you cannot prove it, and never trouble a Reader with impertinent Arguments. I am sure, as yet you have not the least syllable proving *Hellen* to be the daughter of any former wife to *Lewellin*, nor yet any other third *Joan* to be another lawful daughter of King *John* (as you suppose there was, untruly without any ground) neither indeed have you proved the least syllable of any third *Joan* at all.

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Wherefore I think all indifferent men may safely conclude, that *Budiford* and *Suttehall* were given by King *John* unto *Lewellin* in Free-marriage according to the Deed, unles you will deny the Deed which is yet extant to be seen; and also that *Joan* the wife of *Lewellin* was the Base-daughter of King *John*, and mother <sup>42</sup>of *Helene*, as is clear by Historians, unles any shall (as you do) deny all Authority of Historians: and therefore it is plain that in those elder Ages, Lands did passe

with bastard-daughters in Free-marriage, as well as with others, as we see here they did with the said *Joan*.

*Page 17, 18, of your Answer to my Addenda.*

Here you tell me, that I erre a fifth time, in saying, that *Joan* the wife of *Robert de Audley* was the same *Joan* who was wife to *Lewellin*.

*Reply.* I erre not : *Vincent* affirms it, and citeth a Record of *Claus. 14. Hen. 3.* for it: and why should you, or any other, suspect that either *Vincent* or the Record erreth herein?

*Object.* Because (say you) it is impossible that *Joan* daughter of King *John* by *Agatha*, could be wife to *Lewellin*, in *Anno 1204*.

*Reply.* But this impossibility, as you apprehend, is out of a false supposition : for here, you referr us to what <sup>43</sup>you have before shewed : which (as I take it) is in your 3, & 4, pages : which I have also before Answered *suprà*, p. 17, 18. for I agree with you, that probably *Vincent* is mistaken in saying *Agatha* was daughter to the second *William de Ferrars*: and therefore that impossibility is removed : for I believe, she was either daughter of the first *William de Ferrars*, which *Vincent* might easily mistake ; or else daughter of *Robert de Ferrars*, as *Speed* faith she was : but, that *Joan* was daughter of *Agatha de Ferrars*, nothing is, nor can be said by you against it : it is no matter whose daughter *Agatha* was, as to the point in hand.

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*Obj.* And then you further aske, how can this *Joan* wife of *Robert de Audly* be the same *Joan* who was wife to *Lewellin*, unles she had two Husbands living at one time ? and how can *Vincent* say, that she was remarried to *Audley* after *Lewellin's* death ; who dyed not, till the 24 of *Hen. 3. 1240*.

*Rep.* To this I have told you in my *Addenda*, and now tell you again, that, I believe *Vincent* is mistaken in saying it was after the death of *Lewellin* that she was remarried to *Audley* : <sup>44</sup>But, I tell you also, that it seemes to me, that she was divorced

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from *Lewellin*: of which I gave you some Probability by circumstances vouched out of *Mathew Paris*, and *Knighton*: and if So, she might be married again in *Lewellin's* life-time, and yet have but one Husband at a time neither: That, great Persons usually married again after a divorce in those ages: See a Precedent of *Randle Earl of Chester & Constance* his wife, in my *Book of Antiquities* pag. 144, & 146. where both Parties married again after their Divorce, and in the life-time of each other.

And if she married *Audley anno 14 Hen. 3.* then is it a sure Argument, that she was divorced: And whether she were so married or no, *anno. 14. Hen. 3.* let the record vouched by *Vincent*, be the Judge.

*Obj.* But, in Page 18 of your *Answer to my Addenda*, you object against a supposition of a Divorce, thus —— how can we think a Prince of *North Wales*, and a daughter of King *John*, could be divorced, and both of them marry again in their life-time, and no Writer take notice of it?

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*45 Rep.* Yes, very well: for, if I might Answer it with another Question, how many such like occurrences are daily found out by Deeds and Records, which never any Historian (that we know of) hath mentioned? and yet we find some dark Steps of this in some Historians.

*Obj.* Again page 20, you say, that, if I would have added further, what is said in the Welsh-History pag. 293, *sub anno 1237* — Then dyed *Joan*, daughter of King *John*, Princeps of *Wales*, and was buried on the Sea-shore within the Ile of *Anglesey* at *Lhanuaes*, as her pleasure was: where the Prince did build a house of Barefoot-Fryars over her grave: this (say you) would have given satisfaction, that she was never divorced: because certainly (as you suppose) the Welsh-History would not have then called her Princeps of *Wales*, nor the Prince have built that house over her.

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*Rep.* I think, it would have given but little satisfaction in that Point: you know well, that a woman shall not lose her place or Title, though she <sup>46</sup>marry below her Quality: was not Queen

*Catharine*, who married *Owen Tudor* in her Widowhood, called usually Queen *Catharine*, notwithstanding that marriage? And as to the building a house over her Grave, it was no great matter for the Prince to do, who had been formerly his wife, in regard of her Quality: And supposing a divorce, it possibly might be more his fault than hers; and so with some remorse might show some action of kindness, at last.

*Pag. 21. Of your Answer to my Addenda.*

Here you make an objection against your Self, and say; that though *Joan* the wife of *Lewellin* was not the base-daughter of King *John* by *Agatha*, yet it is likely she was his base-daughter by some other woman, because of those Authors by me cited to that purpose.

Whereunto you Answer first, that it is nothing to the case of *Amicia*, whether the said *Joan* was a Bastard or no, as you before have proved.

472. It doth not yet certainly appear to you, that she was so: for, though those Authors [by me cited in my *Addenda*] and some others, do say, she was a Bastard; yet they are not much to be regarded: why so? because *Polychronicon* was a more ancient History than any of the other Authors which I have taken notice of, and yet the Author thereof dyed 1363, which was 159 years after *Lewellin* had married the said *Joan*.

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*My Reply.*

To the First: If this be nothing to the case of *Amicia*, I pray you, what is? Your only Argument that *Amicia* was no Bastard, is, Because she had Lands given with her *in libero maritacio*: for you take your ground-work from the Common-law of later Ages (which yet is a false ground of the Law taken in those elder Ages) that lands could not pass with a Bastard-daughter *in libero maritacio*.

[Page 48.] Now then, if *Joan* be a Bastard-daughter, and had lands given unto her *in libero maritagio*, in those elder <sup>48</sup> Ages, as is by me before clearely proved, both by *Lewellin's* own Deed, made 1222 (wherein the other former Deed of King *John's* is plainly mentioned;) as also by several of our Historians confirming that she had other lands *in maritagio* likewise, and nothing at all Solidly by you proved to infring these Authorities; then must it needs follow, that lands passed *in libero maritagio*, in those more ancient Ages, with Bastards: and so your chief Argument quite overthrown, which you bring to uphold *Amicia* from being a Bastard: And yet you say, it is nothing to the Cause of *Amicia*, whether the said *Joan* was a Bastard, or not.

2. To the *Second*: If you deny the Authority of Historians, then you must needs yield up the Cause, for, this being a Question of History, whether Bastard or no Bastard, & not of Law, & the Precedents of the Law of those Ages now contrary to what you alledge, and cannot therefore be supported by Law, it must needs be tryed by Historians, or Records, or no Way.

[Page 49.] <sup>49</sup> And for what you urge, that the Author of *Polychronicon* dyed above 150 years after that marriage, it is certainly a weak Reason to infring his Testimony, who lived above 350 years ago; and might very well receive that truth from others, who did know it: as other Historians do convey from time to time many things even to our own Age: some taking notice of one thing, and some of another: and some not regarding at all, whether Children be Bastards or no Bastards: which thing if by Historians it had always been carefully and diligently recorded from time to time, it would have brought more things to our Knowledge, then now we can possibly know.

*Pag. 22, & 23, Of your Answer to my Addenda.*

Are all impertinencies, and not worth the taking notice of: For it only reckons up the wives of King *John*.

<sup>50</sup> *Pag. 24. Of your Answer to my Addenda.*

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The only Question then will be (you now say) whether *Lewellin's* wife was King *John's* legitimate daughter by his wife *Hawise*: and if she was, some of our Authors taking notice but of two daughters named *Joan*, which the said King had, did thereupon mistake *Joan* the wife of *Lewellin*, for *Joan* the wife of *Robert de Audley*, and so did mislead several of our late Authors.

*My Reply.*

That *Lewellins* wife was not King *John's* legitimate daughter by his wife *Hawise*, it is out of Question: *Hawise* had no child at all by the King: and, I believe no body but you, would make it a Question: and, for the mistake, which you would fain suppose to be made by some of our Historians to mislead others, it is so ridiculous that another would be ashamed to own it: it is <sup>51</sup>not fit to be put down, nor worth an Answer: and so you would suppose three *Joans*; one to *Lewellin*, another to *Robert de Audley*, and another you cannot deny married *Alexander King of Scotland*: But how will all thesee be proved? sure, you never expected this Book of yours to be read by Judicious Persons.

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*Pag. 25, 26. Of your Answer to my Addenda.*

*Mathew Paris, Knighton*, and others (you there tell us) do call the wife of *Lewellin*, daughter of King *John*, without the Addition of Bastard: and therefore must be supposed to be a lawfull-daughter.

*My Reply.*

If these had called her *Lawfull-daughter*, you had said something to the matter: But other Historians tell you, she was a Bastard-daughter, these call her daughter, but whether Bastard

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[Page 52.] or no Bastard, they say not : <sup>52</sup>which is no proof at all for legitimacy : she is called daughter, *ergo* she was a lawfull daughter : See the weaknes of the Argument: you oft run upon this strain : See more of this, *supra pag.* 39.

*Pag. 27, 28, 29, 30. Of your Answer to my Addenda.*

These are all impertinencies : only *Pag. 30* you say, that you see no Reason to conclude *Joan* to be a Bastard, until it be proved that she was so, by some Record, Deed, or Good Authority who lived in that Age: and then you adde that it is not material to the case in hand, whether the said *Joan* was a Bastard or not, because all the Gifts I mention in my *Addenda* are either not Gifts in *Frank-marriage*, or else not given to the said *Lewellin* with the said *Joan*.

*My Reply.*

[Page 53.] In the first place, I see ; you resolve not to be convinced : But though you <sup>53</sup>be so disingenuous, as not to credit other good Proof of *Authority* and *Reason*, yet other Judicious and indifferent Persons will and ought to subscribe to Reason. And for what you alledge against the Gifts of *Frank-marriage* in my *Addenda*, these are but your own Words, and are not more weighty for that, without just Proof: But I have answered this before, *pag. 11, 12, 13, 14*.

*Page 31. Of your Answer to my Addenda.*

Here you say, that, you did in your former Book give me some Reasons, why the words of *Glanvil* did not prove what I supposed they did, and in the 38 and 39 pages of your Reply did tell me how I had left them unanswered ; and that *Glanvil* did not say, that lands might be given with any woman *in liberum maritagium*, but only *in maritagium*: and yet, I had

the confidence after all this again, to father on Mr. *Glanvil* what he never either meant or said.

<sup>54</sup> *My Reply.*

[Page 54.]

Now, let us see the words of *Glanvil*, *lib. 7. cap. 18.* Whether he doth not say that, Lands may be given with any Woman *in liberum maritagium*: his words are these — *Maritagium, aliud nominatur liberum, aliud Servitio obnoxium: Liberum dicitur Maritagium, quando aliquis liber homo aliquam partem terræ sue dat cum aliquâ muliere, alicui, in maritagium; itâ quod, ab omni Servitio terra illa sit quieta, &c.*

So then; any man may give part of his land to any man with any woman in marriage, so that it be quit from all Service, &c.

But, *Glanvil* saith, that, Lands so given *est liberum maritagium*:

*Ergo, Glanvil* saith, Lands may be given with any woman, *in liberum maritagium*.

Now let the Reader Judg, Whether I, or You, have the greater confidence in affirming an untruth: and I said in my *Addenda*, and truely too, <sup>55</sup>that you had endeavoured to restrain *Glanvil's* words [*cum aliquâ muliere*] but you could not justly do it: nay, the word *in maritagio*, both in *Glanvil*, Historians, and old Deeds, seems not rarely to be understood for *libero maritagio*. See more hereof, *suprâ pag. 21.*

[Page 55.]

Now we come to your Answer touching the Accusations, Untruths, and Absurdities which you fathered upon me in your former *Reply*, and do here seek to palliate: which yet are nothing to the point of the controversy between us.

*Pag. 32, Of your Answer to my Addenda.*

Here you tell me of some Reports of what I intended to do, before I put out my *Addenda*: and, when the said *Addenda* were put out, all, till the 7th page did concern *Amicia*: so that

I was not just to my word in my former *Answer*: and by the same reason, I might write always, and say I do so, as *Addenda* thereunto.

[Page 56.]

**56 *My Reply.***

As to the Reports, whatsoever you were told by any Person whomsoever; I never intended any other then what I did put out: which were those *Addenda* to my *Answer*: But those were only some few Precedents, which I had omitted in my *Answer*; and whereof I gave you notice, before your *Reply* was published: but your *Reply* comming out before my *Addenda* were Printed, I found in your said *Reply* some unjust Accusations and Absurdities cast upon me: and so added further therein a Justification of my self from those unjust aspersions in your said *Reply* whereunto I was necessitated in my own Vindication: wherein yet I purposely omitted many other things in regard of my Word, as I told you in the very close of my *Addenda*: And now in your *Answer* you tax me for not being just to my word, and have aggravated other matters by another book: so that I cannot now incur a <sup>57</sup>worse censure by you, though I alter my former resolution & shall Write on in my own Defence as long as I shall judge it necessary, as I have already before in this Book told you.

[Page 57.]

***Pag. 33. Of your Answer to my Addenda.***

Here you tax me of Partiality: and did it, that you might let the world know, that it was something else besides love of truth, which made me write what I did touching *Amicia*. And here you appeal to the Reader, whether you did not avoid all offensive expressions: this is all your *Answer* here, as to that asperion of yours: which I have before touched in my *Addenda*.

***My Reply.***

As to what you suppose of my Partiality (whereof I have been

lately informed, that you have told it to others) perhaps you might judge o<sup>58</sup>therwise, if you knew all circumstances: but especially that when I writ that Pedegree, which was long time ago, even about the year 1654, presently after the death of the last Person therein named, the truth (of what you suppose I should have inserted) was at that time altogether unknown unto me: But you will say, I had time enough to have informed my self before my Book was Printed: which yet I never intended to Print, till the very time it was Printed: and that was but by Accident neither: Nor could I so perfect it on a sodain, as you or others might perhaps expect: so that I have omitted the last descent and issue of some other families, as well as that: which were yet less material than those of former ages: in regard those of this last age will more easily be found out by Posterity, and are now known to every one.

[Page 58.]

And admit I were Partial never so much, in what you charge me with, yet I hope what I have written you find it impartial to all, so far as <sup>59</sup>I go and do know: would this cure your uncivil Expression towards me in another thing? you say, I do but pretend unto Truth touching *Amicia*, and that it was something else besides love of truth (which you ought in clear dealing to have exprest what that somthing was, that so I might better Answer for my self or confesse my error) which moved me to place *Amicia* in that order in my Book, as I have done: The Sum in English without mincing is all one, as if you should have said thus.— You are Partial to another, but here you do but pretend to truth: for it is not truth that moved you but somthing else: I say, that it was only Truth that moved me, and that what I have writ is according to the dictate of my conscience to the best of my Judgment: no, say you, I do but pretend to truth, I do not speak the truth herein according to my Conscience, it was somewhat else that moved me to it, besides truth: see here then, the one of us must now speak an untruth: and so having <sup>60</sup>said enough of this, I refer it to the Reader, whether that expression was civil and without offence, which you say you did now avoid.

[Page 59.]

[Page 60.]

*Page 34. Of your Answer to my Addenda.*

Here you come to excuse an error and say, that you called *Raufe Manwaring* Chief Justice of *Chester*, because you find in my Historical Antiquities pa. 160, and also in other places, there were in the time of *Hugh Cyveliok*, sometimes two Justices of *Chester*, and sometimes but one.

*My Reply.*

[Page 61.]

I should be glad, if you would show me any such a Precedent, wherein two justices of *Chester* were in that Age mentioned to be so, both at one time together: I deny not, but sometimes the Earls of *Chester* in those ages might direct their Deeds to their officers sometimes in the singular number, and sometimes in the Plural: as thus — *Hugo comes Cestriæ, constabulario, Dapifero, Justiciario, Vice-comiti, & omnibus Baronibus suis, &c.*<sup>61</sup> and sometimes in the Plural number thus — *Hugo Comes Cestriæ, constabulario, Dapifero, Justiciarijs, Vice-comitibus, & omnibus Baronibus, &c.* But this is far from Proving either two Judges, or two Sheriffs at one time, and are here to be understood successively, or with their Deputies under them; as might happen to the Sheriffs oft, but very rarely to the Justice: for I have observed that generally in those ages the Justice is for most part put in the Singular number [*Justiciario*]: for then they executed their places themselves, no Power being given to them in those ages to make or Constitute a Deputy (by commission) at pleasure, as we have now, and in these later ages, hath been usually done: yet possibly upon an emergent occasion, the ancient Earls might constitute another Judge for the Present in the absence of the other to execute the place for a time, and so change them as oft as was thought good: But never shall we find two Judges executing that office at one time together in those Ages, [at *Chester*] <sup>62</sup>that ever I could yet meet withall.

[Page 62.]

Wherefore here is a great disingenuity, and a Pitifull Shift to

palliate a plain error, and will easily appear to all Judicious Antiquaries.

*Page 35, of your Answer to my Addenda.*

Here to make good another untruth you fastened upon me in your former Reply, pag. 9. namely, that I said *Geffrey Dutton* was a witness to his own Deed (which I never did say) you would now make it good out of my own words which are these :— pag. 4, 5, of my *Answer* to the Book of your *Defence of Amicia*: Several other Deeds I have seen of the same Person, wherein I dare affirm among the Witnesses subscribed, he hath five times and more the Word *Domino* omitted, for once that we find it prefixed to his name.

From these words of mine, you now tell me in your *Answer* to my *Addenda*, let the Readers (if they can) find out, how I could imagine his name to be at any time amongst his own <sup>63</sup> Witnesses, if I did not take him to be a Witness to his own Deeds. [Page 63.]

*My Reply.*

Therefore that I may at once clear this Cavill of yours, you mistake the fence of my words, contrary to what I understand them : When I say, that I have seen several other Deeds of the same Person, I mean and understand several other Deeds touching the same Person : for the word (*of*) is used many times for *concerning*, as of or *concerning* the same Person : the *Latine* will demonstrate the word plainer, as *de illo*, that is, of him or concerning him : whereas when it is to be understood as you would have it, the *Latine* faith, *Varias ejusdem Personæ Chartas* : But the English word (*of*) will bear it in either fence : and by the words following, if you had not been too Captious, you might easily know my meaning. And so much of your unjust Calumny of me : see the rest in my *Addenda*, Pa. 11, 12.

[Page 64.]

*64 Page 36. Of your Answer to my Addenda.*

Where you tell me, that what I said in my *Addenda pag. 11*; namely, that if he had been a Knight, he would have called himself by his *Title*, as *ego Galfridus de Dutton, miles*: or, *Ego Dominus Galfridus de Dutton, dedi, &c.* But this is directly contrary to what I writ in the bottom of the fifth Page of my Second book.

*My Reply.*

[Page 65.]

I say those words are not contrary to what I writ in the botome of the said 5. Page: for in that Page I spoke Principally of the word *Dominus* as it was used for a *Lord of a Mannour*, and was always joyned with another Word, as *Dominus Moaldie*: and is to be understood with an exception also of Knights, for those also used the word *Dominus* but joyned it to their name, as, *Ego Dominus, A. B. dedi, &c.* even in their own Deeds, <sup>65</sup>when they were Parties to the same: whereof you may see I spake in the 7. Page following: so that all may see, how you cavil about nothing.

*Page 37. Of your Answer to my Addenda.*

Here you would fain Palliate another Grosse Mistake of your own in your former Reply, where you said that *Domino Galfrido de Dutton* (one of the Witnesses to the Deed of *Geffrey de Dutton* to his daughter *Margaret* of the Mannour of *Nether-Tably*) was Father of *Geffrey de Dutton* Party to the said Deed: which you seek to do, first in saying that I have not seen Sir *George Warburton's* Deeds, and therefore the father might well live on to be Witnesse to that Deed.

2. In saying that one of the *Geffrey Duttons* of *Chedle* was a Knight, for which you cite my Book of *Antiquities pag. 206*, though I conceal it in my *Addenda*: which will serve your Turn,

you say, because I would have the Reader to believe that there was <sup>as</sup> no Sir *Geffrey Dutton* living when the Deed of *Tabley* was made: and if Sir *Geffrey of Budworth* was then dead, then that *Domino Galfrido de Dutton* in that Deed must be applyed to *Dutton of Chedill*: for certainly *Domino Galfrido de Dutton* must be applyed to one of the Knights.

[Page 66.]

*My Reply.*

I never saw such Shuffling and cutting (as I may say) as you here make to avoid a most Palpable grosse Mistake of your own, which yet in your *Reply* you endeavoured to have charged upon me, about that *Domino Galfrido de Dutton*:

As to the first Reafon: because I have not seen Sir *George Warburton's* Deeds, *ergo* Sir *Geffrey Dutton* the Father might live on very well to be a Witnesse to his Son's Deed of *Nether-Tabley*: what strange and wild Reason is this? if you Speak of an Absolute possibility, it might be so: and so it might be, if I had seen all his, and all other men's Deed's: But I have Deeds <sup>as</sup> of my own, Probably demonstrating *Geffrey Dutton* son of *Adam Dutton*, to be dead before this Deed of *Nether-Tabley* was made, long time.

[Page 67.]

To the Second: I confess, I do call one, Sir *Geffrey Dutton* of *Chedil*, in my book: but I call him not Sir *Geffrey Dutton* of *Chedill* Knight, as you alledg, nor doth he in my Authority there vouched write himself, *Ego Dominus Galfridus de Dutton*: But in *Hamon de Mascyes* Deed unto him, he is called *Domino Galfrido de Dutton*, which is that Deed which is cited by me in my book: which you say I do conceal in my *Addenda*, because I would have the Reader to believe, that there was no Sir *Geffrey Dutton* living at the time when the Deed of *Nether-Tabley* aforesaid was made: My words in my *Addenda* are pag. 13, — All these *Geffrey Duttons* (if I mistake not) I have seen sometimes subscribed with *Domino* prefixed: but not any (that I remember) writing himself thus — *Ego Dominus Galfridus de Dutton, dedi,*

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[Page 68.] &c. And then for your asserting certainly, that *Do-<sup>68</sup>mino Galfrido de Dutton* must be applyed to a Knight, perhaps it may sometimes, but not always: this the *Logicians* call *Petitio Principij*, or a begging of the Question: but what all this is to the Point of clearing your self of the Grosse absurdity aforesaid, I know not: I am sure it argues much disingenuity by Justifying your error, without a just ground or reason.

*Page 38, 39, of your Answer to my Addenda.*

Here you say, though I told you that *Margaret* was daughter, but not daughter and heir of *Geffrey Dutton*, as you alleged in your former Reply; yet you cannot tell, how that will appear without the sight of Sir *George Warburtons* Deeds; because Sir *Peter Dutton* might be son to a *Geffrey Dutton*, and yet Brother and heir-male to *Geffrey* the Father of *Margaret*: but then you adde, it can be no Grosse one, if it be any mistake at all.

[Page 69.]

<sup>69</sup> *My Reply.*

Every man cannot but now see a constant disingenuity, and an opinionated resolution in you against truth it self; or to whatsoever I shall say, right or wrong. Though you partly acknowledge this a mistake with an *if*, yet you will extenuate it, not clearly and ingenuously confess it: which indeed you do all along through the whole course of your Book.

My own Deeds do illustrate this, if occasion were to produce them, as clear as the Sun at noon-day: and that Sir *Peter Dutton* Knight (whom I find several times fo stiled) was not only heir, but son also to the same *Geffrey Dutton* who gave *Nether-Tably* to *Margaret* his daughter. But of this enough.

*Page 39. Of your Answer to my Book of Addenda.*

You would here also Bespatter me with a falsity, and do fay,

because I <sup>70</sup>would make you believe that I formerly meant as I now pretend, that I did a little after Speak pag. 14, Of my Addenda of Knights who usually stiled themselves thus—*Ego Dominus A. B. dedi, &c.* or, *Ego Dominus A. B. miles dedi, &c.*: But, whoever can find those words in my Answer, can find out that which you are not able to do.

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*My Reply.*

I confesse those words are not in my Answer expresly: But what I put here by *A. B.* are in my Answer pag. 7. instanced in, by your own Ancestours thus—*Ego Rogerus*, or *Ego Willielmus Manwaringe miles*: Nor did I well, though my instance be to the same Purpose, to vary a Tittle from the instance in my Answer: because I referred to my Answer: and it is a negligent Errour.

<sup>71</sup> Pag. 40, 41, of your Answer to my Addenda.

[Page 71.]

Where first you ask me, why *Domino* prefixed to the name of a Witnesse (who was not a Clergy-man) is not a good proof that he was a Knight? especially since some, who are likely to be most skilful in those matters, are of Opinion that it is:

2. You again ask me, why I was more complemental in my Answer, then in my Addenda, in calling, *Raufe, Roger, and William Manwaring Knights?*

3. Why do not I prove the word *Domino* prefixed to some Persons names, before they were made Knights? or to one, who was no Clergy-man, and but an esquire at the time of his death?

4. Page 41. Why doth not the word *Domino* prefixed to the names of *Raufe, Roger, and William Manwaring*, prove them to be Knights, as well as it doth Prove two of the *Geffrey Duttons* to be Knights?

725. Why did not I answer your Question in your Reply pag, 16, if the word *Domino* do only Signify Master? why is it put

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before the names of some Witnesses, and not of others? although other Persons to whose names it is not put, are many times Lords of a greater estate.

6. Why I doe not call all the 4 *Geffrey Dutton's Knights*, as well as two of them?

*My Reply.*

To the first, I Answer; that, as some skilfull men are of opinion, that *Domino* prefixed in subsciptions of Witnesses in those elder Ages under *Hen. 2. Rich. 1.* and King *John*, such were always Knights, where it is not Prefixed to Clergy-men; So other skilfull men are of Opinion, that it was sometimes also prefixed in those ages to Persons of better Sort and Quality though no Knights, as well as to Knights, and Clergy-men: of which last opinion is Mr. *Wood of Oxford* the Antiquary and Mr. *Blunt*<sup>73</sup> of the Temple, as I was by letter informed from the said Master *Blunt*, 1673.

[Page 73.] 2. To the Second: I did not call your three Ancestors in my Answer Knights out of a certain ground unto my self that they were so, but because you had spoken to me thereof before, and I knew your desires therein, and therefore out of my civility called them so: for I there tell you in my *Answer*, that I had rather give to all, especially to your family, more then is due, than lesse: Howbeit you urged me in your Reply to a Reason: which, see in my *Addenda* pag. 16, 17.

3. To the third I have so proved (as I conceive) the word *Domino*, given to some Persons of greater Quality in some Notes of mine in Manuscript on the several notions of the Word *Dominus*, who were neither Knights, nor clergy men: but these brief Notes I never yet Printed, Esquire were none in those Ages:

And, I think it will not be amisse, for me to transcribe those notes of the several notions of the word *Dominus*, in this Place.

[Page 74.] 74 The Latin word *Dominus*, and the Greek word *κύριος*, and

our English word *Lord*, do properly and usually expound one another: and, as the Greek word, κύριος hath its name ἀπὸ τοῦ κυριεύειν, so the Latin word *Dominus*, à *Dominando*: both of them properly signifying one that hath authority and power of Rule:

1. 'O *Kύριος*, and *Dominus*, and the *Lord*, being put absolutely and alone, are, by way of excellency, always to be understood of God, or Christ: in whom is all Power and Dominion in Heaven and earth: and, in this notion, we have it frequently used in holy *Scripture*. So also, *Anno Domini* (put alone) is always understood of *Christ*, being a usual computation from the Birth and Incarnation of our Saviour.

2. Sometimes the word *Dominus*, and *Lord*, are joyned with another word by way of Restriction: as *Dominus Imperator*, *Dominus Rex*, *Dominus Papa*, *Dominus Episcopus*, &c.

It feemeth to have been applyed to the Kings of *England* all along from <sup>75</sup>the time of the *Norman Conquest*: as *Dominus Johannes Rex*, and *Excellentissimus Dominus Henricus Rex*: See in my Book of *Antiquities of Cheshire*, pag. 149, and 152: Many other examples might be cited herein. So in all our Endictments it is said, *contra Pacem Domini Regis*: and, thus applied, it is always rendered in English—*Our Sovereign Lord the King*: because of the Supreme power inherent in our Kings: *Sovereign* in French signifies, one that hath no Superiour: and this Appellation of *Sovereign Lord*, I find in the Statutes of 7 *Edw. I.*, and 13 *Edw. I.* and so downwards, through the whole book of our Statutes.

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3. Sometimes the word *Dominus* is applyed to inferiour Persons, & Subjects:

As First, To Lords of greater Territories: so, in *anno 1176*, when *Henry the 2d.* gave *Ireland* to *John* his younger son: who (after that he became K. of *England*) assumed the Title of *Dominus Hibernie*, to his other Titles: see my Book of *Antiquities* pag. 77.

Sometimes to Lords of lesser Ter-<sup>76</sup>ritories: So I find it

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applyed about the beginning of King *John's* raign, thus — *Ego Robertus Dominus Moaldicæ, & Seneschallus Cestriæ, concessi Domui Sanctæ Werburgæ Virginis in Cestriâ, tam villam de Goos-Tree, &c.* The Original of this Deed is now in Possession of *Manwaringe* of Barnshaw in *Cheshire*: And it was most frequently applyed to every Particular Lord of any small Mannour or Village under King *Edward* the first, as is apparent out of my own Deeds and Charters: as, *Ego Willielmus, Dominus de Tabley*; about 20 *Edw. I. Q. num. 11.* This was *Over-Tabley*: also, *Ego Willielmus de Tabley, Dominus de Knotsford, dedi... &c.* about 22 *Edw. I.* See my book of *Antiquities*, pag. 295, 296: infinite others there are, of this nature.

And in this notion it is always to be rendered in *English* by the word *Lord*: as, *Lord of Tabley*, *Lord of Knotsford*, and the like: and so it is often applyed at this day.

4. Now let us see the notion of *Dominus*, as it is expounded by our *English* word [*Sir*]:

[Page 77.]     <sup>77</sup>Sometimes the word *Dominus*, and *Sir*, is, in its general notion, applicable in common discourse to all Persons of Quality, from the highest to the lowest, as hath been said already: and so are both these words used at this day.

More particularly, the word *Dominus* in old Deeds was applicable to Persons of great Quality, and to the better sort of Gentlemen, about the raign of King *John* and *Henry* the third: I find it thus applyed in *anno 16. Hen. 3.* See in my Book of *Antiquities* pag. 133, *Ranulphus, Comes Cestriæ & Lincolnia...* *Salutem: ad universitatis vestræ notitiam volo pervenire, me dedisse Dominæ Hawisiae de Quincy Sorori meæ charissimæ, Comitatum Lincolnia, &c.*: Where it is to be expounded, the Lady *Hawys de Quincy*: So also *ibidem*, pag. 152. — *Hæc est conventio facta inter Dominum Ranulfum, Comitem cestriæ & Lincolnia... &c.*: about 6 *Hen. 3.* Where it is also to be expounded by our English word (*Sir*): and so we find it expounded in a French

[Page 78.]     <sup>78</sup>Deed de anno 18 *Edw. I. 1290*: — *A Touts ceaux Felippe, que fuit femme Monsieur Thomas de Dutton, Salute. Sachez moy*

aver graunte... a toute ma Vie à mon cher Seigneur Sire Henri de Lasci, counte de Nicole & conestable de Cestre, Toute le droit & le cleyme que ie avoy... en une Pechery que est appelle Chiploade en le Countee de Cestre... ai ces Tesmoines, Monsire Robert de Hertford, Sire James de Nevile, Sire Wautier Bek, Sire Nicol de Leycester, Sire Peres Mallorè chivaliers, William de Nunny, John de Lundre, & autres. Done à Lundres, 24 iour de Maij, 18 Edw. I. l'an du regne le Roy Edward 18. Where he is called Sir Henry Lacy, Earl of Lincoln: Lib. C. fol. 156. x. taken out of one of the great Couchir-Books in the Dutchy-Office at Grays-Inne, London Tom. I. Comitatus Cestriæ: num. 13. fol. 43. b.

And it is not likely, that Randle Earl of Chester, and Henry Lacy Earl of Lincoln, had the Title of *Dominus* prefixed as Knights, because they were Earls and supergraduated, the lesser Titles being drowned in the <sup>79</sup>greater: howbeit I find that Randle Earl of Chester was Knighted anno 1188: but it seems to me, that it was the custome of those ages to call them Sir Henry Lacy, Earl of Lincoln, and the like: and so was many times given to the better Sort of Gentlemen under King John, and Henry the third, as you see it was to the Lady Hawys, though no Knights.

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So likewise Lib. c. fol. 67. b.—*Anno Gratiae 1256, die Veneris proximâ ante Natale Domini, circâ horam diei primam facta est hæc Conventio, inter Dominum Edmundum de Lacy ex una parte, & Dominum Willielmum Longespée ex altera. Et, quid prælocutum fuerat in Vasconia super maritagio Henrici filij & heredis dicti Edmundi, & Margaretae filie & heredis dicti Willielmi, dicto die ex consensu Partium completum est, &c:* And in the next deeds following *ibidem* fol. 67. c. *Vniverſis... Edmundus de Lasci conſtabularius Cestriæ, Salutem, &c.* dated anno Gratiae 1257. Where the same Edmund hath not so much as the word *Dominus* added; and therefore <sup>80</sup>no Knight: Nor is it a sure rule in the Deeds of those ages to be understood of a Knight, unles the word *miles* do follow: because it was then usufally applyed to Clergy-men also, and sometimes to the better fort of Gentlemen, though no

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Knights ; as well as to Knights : before the age of King *John*, Knights were not so common and frequent as since : For, anno *Domini* 1256, 40 *Hen.* 3, who so had fifteen pound *per annum* in lands, were called to be made Knights, or to be fined. *Mat. Paris.*

And from about this time downwards, the word *miles* seems to be added to the name of Knights, constantly.

5. So that the word *Dominus* was certainly applyed to Knights, and also the word *miles* often added, under *Henry the Third* : and our English word (*Sir*) was very anciently affixed to the Christian Names of Knights : And in the Reign of *Edward the first*, was so much taken to be parcel of their names, saith *Selden* in his *Titles of Honour pa. 939.* as that the Jews [Page 81.] <sup>81</sup>then in *England* did in their Hebrew Instruments (called *Stars* obviously in the Records) write it *Sir*, without interpreting it by any word of their own : And we have a Precedent in Hebrew there set down by *Selden*.

That the word *Dominus* was frequently applyed unto Knights under *Edward the first*, having the word *miles* also added is manifest out of my own Evidences : I. num. 5.—*Ego M. W. dedi Domino Nicolao de Leycester militi, terras in Wath [in Yorkshire] 22 Edw. I.* Also I. num. 28. *Sub anno 20. Edw. I.* Infinite other Examples occur elsewhere also ; and then was *Domino* expounded by our English word *Sir*, 18 *Edw. I.* as appears by the french Deed a little before transcribed : and so have they been applied ever since to this day : and in this Notion have expounded one another.

6. So also the word (*Sir*) hath been applied in *England* to Clergy-men very anciently : I find it clearly so from King *John's* time downwards to the reign of Queen *Elizabeth*, or King [Page 82.] <sup>82</sup>*James* : which was also expressed in Latine by the word *Domino. Lib. c. fol. 21. D.* among the witnesses thus — *Testibus, Domino Willielmo de Mascy, Parsond de Bowden, Mattheo de Hale, ... &c.* This was in the time of *Henry the third*, about anno *Domini* 1250 : many Examples of like nature occur in

those times: and sometimes used without the word *Personā* or *Rectorē*, but most usually with it: as, *Domino A. B. tunc Rectorē Ecclesiae de Mobberley:*

And the People commonly called their Parish-Priests by the appellation of Sir *William Maffy*, Sir *Richard Comberbach*, and the like, in ordinary communication, as at this day we call Knights for the most part: and the Title (*Sir*) was so applyed to Clergy-men, till the times of Queen *Elizabeth*, and King *James*, in our Country. For, after the reformation of Religion, it began by little and little to be omitted: It was given to Priests at the first, as it were in honour: because of the great esteem which the People had of them.

<sup>83</sup>7. The word *Dominus*, and *Sir*, are at this day applyed to Batchlours of Art in our Universities: but this is only to their Sir-names: as, Sir *Blackburn*, Sir *Sanderson*, and the like.

[Page 83.]

The word *Cyr* (*vulgō Syr*) *Spelman* in his Glossary, pag. 183, deriveth from the Greek κύρος, as an abbreviation of the word κύριος: as *Don* and *Dom* from the latin word *Dominus*, frequent amongst the Italians and Spaniards: and the letter *C*. (having the vowels of *e*, or *i* and *y* following) is pronounced by English men as the letter *S*: which appears in the words *Certain*, *City*, *Circuit*, *Civil*, and the like.

Others derive the word *Sir*, from the Hebrew word *Sar*, which Signifies a Ruler, a Lord, or Prince: an honourable appellation.

Some say, We have the word *Sir* from the French word (*Sire*) which answers to the Latin word *Pater*, or *genitor*: and so English-men at this day usually call a Grand-father (*Grand-sire*) and so much of the word *Dominus*.

4. To the fourth Question. It <sup>84</sup>doth as well prove it in your Ancestors, as it doth in the two *Duttons*: But it is not yet certain to me of either; for sometimes they have *Domino* prefixed, and sometimes not.

[Page 84.]

5. To the fifth Question: I do not say, that the word *Dominus* doth only Signify *Maiſter*, But, it seems to me, it may be sometimes so expounded where the Party is not certainly a *Knight*:

and perhaps also it may be expounded sometimes *Sir* (taken in the latitude of that word) and applyed to great Persons, though no Knights : as Sir *Henry Lacy* Earl of *Lincoln*, and the like : And the word, *Domino*, may be given to some Persons of better note in respect of their Quality, or in respect of their Office, and yet not to others, in the same Deed : which others, may be good Gentlemen also ; but at that time perhaps not of so publique note as those to whom it is so prefixed in the same Deed.

[Page 85.] 6. To the Sixth : I do not call all those four Knights, nor yet two of them : for, *pag. 226* of my *Antiquities*; I there call one, Sir *Geffrey* of <sup>85</sup>*Budworth*, son of *Adam de Dutton*; but I do not call him Knight : and so *pag. 223*, I call another of them, Sir *Geffrey de Chedill*, but I do not call him Knight : for, as I said immediately before, *Dominus* perhaps may be sometimes so expounded, and sometimes also, *Maister* : and perhaps here it may be rendered either way : and yet I must confesse, when I writ that book, I did not heed these small niceties so acurately : and whether he were a Knight, or no, it is not much material.

What now followeth in your *Answer to Page 49*, is indeed little material, or what hath else been answered by me formerly, in my other books over and over again.

*Page 49, of your Answer to my Addenda.*

[Page 86.] Here now you come to *Bertred* again, and say, that you have heretofore proved her to be but 24 years of Age *anno 1181*: and now you find in the third part of Mr. *Dugdale's Mo-86 nasticon Anglicanum*, *pag. 226.* that *Hugh Cyveliok* and his mother *Mande* did give *Stivinghale*, vulgo *Stifshall in com. Stafford* : to *Walter Durdant*, Bishop of *Chester*, and his Successours : to which Deed *Eustace* the constable was witness.

Now the faid Earl *Hugh* being not in a capacity to Seal a Deed until he was one and twenty years of Age, and *Eustace* being slain in a battel against the Welsh, *anno 1157*, the said

*Hugh* must needs be at the least one and twenty years older than his wife *Bertred*: But it is likely, the Deed was made some years before, to wit, immediately upon the death of *Randle de Gernonijs*, his Father: For the said *Randle* dyed excommunicate, and *Stivinghale* and those other lands were given for his absolution and the health of his Soul :

*My Reply.*

Here, you ground your Argument again upon a mere error, mistaking altogether the Law and Customs of <sup>87</sup>those elder ages: For, you may see the very like precedent in my book of *Antiquities*, pages 114, 115: where you find *Richard*, Earl of *Chester* joyning with *Ermentrude* his Mother, in the Grant of *Wudmundfleii*, to the Abbey and Church of *Abbington* in *Barkshire*, anno 6. Hen. 1, anno Domini 1106, whiles he was yet scarce twelve years old.

[Page 87.]

Whereof the Book of *Abbington* immediately before the Deed there transcribed, saith thus, fol. 47, . . . .

*Ipse comes benefactum extulit, & suo descriptio roboravit: quod descriptum, Sigillo quidem matris Signari constituit: nondum enim militari Baltheo cinctus, materno Sigillo literæ quælibet ab eo directæ includebantur: hæc de re, quod è annotatur, Comitissæ potius quam Comitis Sigillo Signatur.*

*Selden*, from these words observeth, that the Law being such, that whosoever was Knighted, though before the Age of one and twenty, he was esteemed as of full Age in regard of any Wardship or other Tuition : and the <sup>88</sup>use being, that such great Lords were often Knighted before they were of full Age, and this Earl *Richard* not having as yet received the honour of Knighthood, but being a Child and under the tuition of his Mother, for that reason he used her Seal to this his Charter, and to other his Letters also: *Selden* in his *Titles of Honour*, pa. 786.

[Page 88.]

Thus you grossly mistake all Antiquity, by your fragments of Law perpetually through all your books: For, Earl *Hugh* joyning here with *Maude* his mother in this Grant of *Stivinghale*, shows clearly that he was then but a Child, and under Tuition of his Mother: For, when such Lords were either at full Age, or so old as to have received the Honour of Knighthood though before they were of full age, I believe you will scarcely find in those ages, that either they used their Mother's seal, or that the Mother joyned with them in their Grants.

And therefore, supposing Earl *Hugh* to be about twelve years [Page 89.] old when he joyned with *Maud* his Mother in the <sup>89</sup>Grant of *Stivinghale*, at which age Earl *Richard* joyned with his Mother *Ermentrude* in the Grant of *Wudmundeslei*; and that the grant of Earl *Hugh* was made *anno 1157*, then was Earl *Hugh* born *anno 1145*: but I will suppose the Grant made *anno 1155* (& it could not be made much sooner, for it must needs be after the death of his Father *Randle*) then was Earl *Hugh* born *Anno 1143*: and so he would be about Ten years old at the death of his Father: so that you have brought the strongest Argument against your self, that possibly could be in so dark a path against your most erroneous computation of *Hugh Cyveliok*'s age: which you so much stood upon in your former books upon poor weak grounds, as I have formerly told you.

*Page 50, 51, Of your Answer to my Addenda.*

Here you come to another weak reason to prove the birth and age of *Hugh Cyveliok*: and say, that in the *errata* at the very [Page 90.] end of *Powel's* notes, <sup>90</sup>showing how the Errors in Printing should be corrected: *Pag. 197, line 16*; the Welsh History is mis-printed in the said Page, and should have been Printed thus . . . About the same time *Hugh* son to the Earl of *Chester*, fortifyed his Castle of *Cymaron*, & wonne *Melienyth* to himself.

Now, the time when this was done, we find there to be *anno* 1142: and you say, I will not deny but the Welsh History is of good Credit, because I follow the same in my book of *Antiquities*: And *Powell* in his notes thereon tells us, that *Caradoc Lhancaruan* is reputed by all learned men to be the Author thereof to the year 1156: and that by the Authority of *Vossius*, and *Isaacson*, the said *Caradoc* was living when *Meliennyth* was wonne.

So then, you compute, that supposing him, the faid *Hugh*, to be about twelve years old at the winning of *Meliennyth*, *anno* 1142: and that he should marry *Bertred* whiles she was but 14 years old; then the marriage (say you) would fall in *anno* 1171: <sup>91</sup> yet would *Hugh* be 41 years old when he married *Bertred*: and so by consequence it is not likely that *Bertred* was his first wife, and then it is to be presumed that he had a former wife, and that-former wife must be mother of *Amicia*, and so *Amicia* must be a legitimate daughter: All which are but bare Suppositions:

[Page 91.]

### *My Reply.*

Here is a fine Computation, and upon a fure Ground no doubt: But let us examine the matter a little. I will first put down the words of the *Welsh-History*, as it is put out with *Powell's*-notes, *Anno* 1584, pag. 197.—

About the same time [scilicet, *Anno* 1142] *Hugh*, Earl of *Chester* fortifyed his castle of *Cymaron*, and wan *Meliennyth* to himself: and at that time, King *Stephen* took *Geffrey Mandevyle* Prisoner at *Saint-Albons*.

See here two grosse Mistakes in the Welsh-History aforesaid: first, *Hugh* Earl of *Chester* said to take *Meliennyth*, *Anno* 1142: when it is most <sup>92</sup>certain, there was no such Earl of *Chester* at that time: for *Randle de Gernoniis* (Earl of *Chester* and father of *Hugh*) dyed not till *anno* 1153, as is clearly proved in my book

[Page 92.]

of *Antiquities* pag. 129: so that *Hugh*, Earl of *Chester*, is most certainly mistaken here, for *Randle* Earl of *Chester*: and *Geffrey Mandevyle* is here also mistaken for *William Mandevyle*; see *Matthew Paris*, *sub anno 1142*, pag. 79.

But let us now see, how you would stretch this to serve your turn, and to be meant of *Hugh Cyveliok*: marry now, you turn us to the *Errata* at the end of *Powel's* notes on the Welsh-History aforesaid: where, among other *Errata*'s to be amended, it is said — *Pag. 197. line 16. Hugh, Son to the Earl of Chester.* An amendment certainly worse than the Errour it self: For *Randle de Gernoniis*, a man of great Valour, of an Active and turbulent Spirit, famous for exploits of warre, who about the same time, to wit, in *anno 1141*, took King *Stephen* Prisoner at the Battell of <sup>93</sup>*Lincoln*, was more likely in that year 1142 to be the Person employed in this Exploit here mentioned, than a child, who (I am very confident) was not yet born.

[Page 93.] So that if you have no better proof than this for your Supposition, you can never hope for any Judicious man to believe what you here do say: nor can you certainly prove by any Historian of Credit, or by any Record, that *Hugh Cyveliok* was at this time born: nor can you make it to appear, that *Randle de Gernoniis* was married till about the year 1139, or 1140: Wherefore, it is certain, that *Hugh Cyveliok* had never any other wife but *Bertred*; and *Amicia* must by sure consequence be a Bastard, being no daughter by *Bertred*: nay, the very Deed by you produced (& by me before-mentioned) of *Hugh's* Grant of *Stivinghale*, joyning therein with *Maud* his mother, being then a child and under Tuition of his Mother, clearly shows that he could neither be so old as you would now suppose him, nor yet that he was born *anno 1142*.

[Page 94.] <sup>94</sup> What you urge of my following of the Welsh-History, and the credit I have thereof; I knew no better to follow, for the Welsh Kings: which yet I have fortified in some things with better proof: And as I believe it true in many things, so it hath

also some grosse mistakes and errors ; nor is it at all proved by good Authority, or exactly composed throughout ; nor shall you therein from the beginning find all the Wifes, Children, and Bastards, of the ancient Princes or Kings of *Wales* clearly recorded : and so are Dr. *Powell's* Notes thereon full of errors ; and especially in his absurd Pedegree of the Earls of *Chester*, and in several other things.

Thus have I run through your *Answer to my Addenda* : and now I appeal to the ingenious Reader, whether in great deliberation I may not justly conclude the same from the beginning to the very ending, either stuffed with grosse mistakes, or impertinent Fragments of Law of later ages, (which are either mistaken <sup>95</sup> for the Law in the more ancient ages, or brought in upon false grounds, and nothing at all to the point, for which they are produced) or wild and weak Answers, or great disingenuity in denying and palliating of plain Truths, or misreporting of Authorities and mistaking of them, to say nothing of your unjust Calumnies : All which will more clearly appear to the ingenious Reader in the diligent Perusal of this Reply.

[Page 95.]

And I further appeal, Whether you have at all brought any one substantial Argument in all your books, that proves *Hugh Cyveliok* to have had a former wife ; and which I have not fully and clearly answered in this or some other of my books : which not being proved, *Amicia* must certainly be a Bastard : And if you will keep to this one Point, and meddle with nothing else, which is the main Question between us, to wit, Whether *Hugh Cyveliok*, Earl of *Chester*, had a former wife before *Bertrede*? I will joyn issue with you in this very Point ; though in strictnes you ought <sup>96</sup> also to prove *Amicia* to be daughter of that former wife, if there were any such : I say, If you will publish any Arguments, briefly and Syllogistically, without running into any other Point to confound the matter, and prove your Propositions Scholastically by Reason or Authority fairly and briefly for the better apprehension of all Readers ; I will undertake to give a full and

[Page 96.]

clear *Answer* to every Particular, and prove all my Affertions by good Reason and Authority, to the satisfaction of all Learned Readers; And when we have so done, let us leave it to the whole world to Judge: otherwise there will never be an end.

Mobberley,  
*April.* 14.  
1674.

Your loving Cosin  
and Servant,

P. L.

Sir *Thomas Manwaring's*

LAW-CASES  
MISTAKEN:

OR THE  
Ancient Law Mif-Understood.

AND THE  
New Law Mif-Applyed.

Wherein is shewed, That all those  
Parcels of Law, produced by Sir *Thomas  
Manwaring* Baronet, in all his Books,  
to avoid a BASTARDY, are all clearly  
Mistaken by him: And were either no  
LAW in the Age of *GLANVIL*, or  
are altogether impertinent to the Point  
for which they are urged by him.

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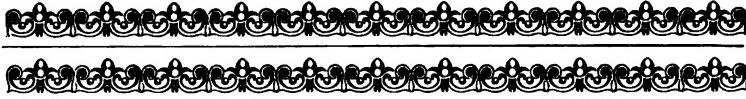
By Sir *Peter Leycester* Baronet.

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*LONDON,*  
Printed in the Year, M,DC,LXX,IV.

K K





## Epistola Dedicatoria.

*Gravissimis Doctissimisque Viris,  
Universis Angliae Justiciariis,  
Salutem.*

Domini Venerabiles.

**C**um nuper admodum de Bastardiâ Antiquâ orta sit nuga-  
toria valde ac nullius momenti controversia, inter duos  
Sanguinis Propinquitate conjunctos, sed hâc in re diverſi  
inter se judicij; Quorum unus (primus hujus contro-  
versiae instigator, qui rectius forsan sibi consuluisseſſet ſi tacuiffeſſet)   
appellavit legem, alteram ac Priorem investigatingi causâ uxorem  
Hugonis Cyvelioc, olim Comitis Ceftriaæ; adeò ut hoc idem ex  
incerta admo-|dum legis normâ probare totis viribus nitatur: quod  
tamen nec ex Historiis, nec Archivis, diligentissimâ licet indagine,  
uſpiam conſtare poſſit. Hunc ego ſanè eadem ſequi viâ non grava-  
bor: Sicut enim Festus Divo Paulo dixit, καίσαρα ἐπικέκλησαι;  
ἐπὶ καίσαρα πορεύονται: itidem ego; Appellavit legem? ad legem  
ibit: Quapropter hunc meum libellum in lucem dare, opportunum  
duxi, ut melius ſciri poſſit Legis Veteris ac Novæ ſtatus: Quem  
fanioribus uestrīs judicijs h̄c exhibere mihi libuit:

Nescio reverā, Doctissimi Gentis noſtræ Senatores, Cui potius  
eundem darem & dedicarem, quām vobis-ipsis, Qui legis noſtræ  
eftis Interpretēs: Vos omnes itaq̄e obteſtor,

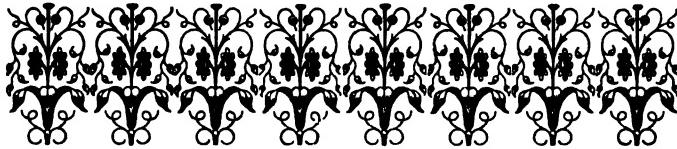
An-non, ſæculo Glanvilli, ex antiquâ lege noſtrâ, dare terram in  
liberum maritagium cum Bastardâ filiâ ſuâ cuivis homini liceat;

*etiam si, mutata lege, Donum in liberum maritagium cum Bastardâ lex hodiè non permittat?*

*Sagacioribus vostris innitor judicijs: parum me legibus versatum profiteor: tantum scire legis mihi sufficit, quantum Privato homini Generoso necesse est: Studia alia aliorum me ducunt: Theologiam cæteris omnibus præfero, cuius studium humano generi apprimè necessarium duco: Historia etiam me maximè delectat: Sed quid proficiscor? Sisto gradum: & ad rem redeo:*

*Si in his erraverim, παλινφθιαν ἄδειν paratus sum: Sin autem non erraverim, ad veritatem contra aliorum Calumnias vindicandam, vos strenuos mihi fore Patronos, spes est. Valete.*

Mobberleiæ  
*Calendas Maij,*  
1674.



<sup>1</sup>Sir Thomas Manwaring's

[Page 1.]

## Law-Cases Mistaken, &c.



Shall in the first place rally together all those Peices of Law of later Ages produced by Sir *T. Manwaringe* and Misapplyed by him, in his three books lately Published to avoid the Bastardy of *Amicia*, under *Henry the Second*: which I have briefly collected together in the following Pages: and next to them I have likewise put down in brief those, Parcels of the Law in *Glanvil's* time, and those more ancient Ages, contrary to those produced by Sir *Thomas*: This done, I shall prove those Parcells of the Law of the more ancient Ages by good Authority, either out of *Glanvil's* own book *de Legibus Angliae* (who was Chief-Justice of *England* under *Henry the Second*, and lived in the very Age with *Amicia*, and was the first since the *Norman-Conquest* who hath committed unto writing any thing touching our common Law of *England*) or else by clear Precedents of those times, or other good Authority; Shewing likewise the errors of what is said by Sir *Thomas* to the Contrary: And lastly, I shall cull out the other impertinent Parcels of Law in all his books, shewing how they are brought in upon false grounds, and altogether impertinent to the Point for which they are Produced.

[Page 2.]

[Page 3.]

*3 Parcels of the Law of later Ages, Produced by Sir Thomas Manwaring, and Misapplyed by him.*

[Page 4.]

1. **T**hat, Lands cannot passe *in liberum maritacio* with a Bastard-daughter. *Cook* 'pon *Littleton*. fol. 21. b.
2. **T**hat, The woman in a Gift of *Frank*-marriage must be of the blood of the Donour, who is the cause of the Gift: *Cook* upon *Littleton*, fol. 21. b. See the defence of *Amicia*, pag. 40: and also Sir *Thomas* his Reply to my Answer pag. 44, a Bastard is not *de Sanguine Patris*. *Dyer*, fol. 374. b.
3. **T**hat, the words [*in liberum maritagium*] are words of Art, and cannot be expressed by words equipollent; and so are necessarily required in a Gift of *Frank*-marriage: and, because those words do create an estate of inheritance against the general Rule of Law, therefore they must be punctually pursued: *Liberum* without *ma-<sup>4</sup>ritagium*, or *Maritagium* without *Liberum*, not good, *Cook* upon *Littleton* fol. 21. b. also the Reply of Sir. *Thomas* to my Answser, pa. 55, 56, 57.
4. **T**hat, If a man give Land with his Daughter *in Connubio Soluto ab omni Servitio, &c.* yet, in this Case, here passeth but an Estate for Life. *Cook*, ibid fol. 21. b.
5. **T**hat, Lands given *in libero Conjugio* are but words like *in Connubio soluto ab omni Servitio*, and so make but an estate for Life: Sir. *Thomas Manwaring*'s own words in his *Defence of Amicia* pa. 48. the Lord *Cook* saith no such thing.
6. **T**hat, *Glanvil* doth not say, that Lands might be given with any woman *in liberum maritagium*; but only, *in maritagium*: Sir *Thomas* his own words in his Answer to my *Addenda*, pag. 31. And in his Reply to my Answser pag. 39, 40.
7. **T**hat *Hugh Cyveliok*, Earl of *Chester*, could not be in a Capacity to Seal a Deed till he was one and Twenty years of Age: Sir *Thomas* in his Answer to my *Addenda* pag. 49.

<sup>5</sup> *Parcells of the Law in Glanvil's time, and those more ancient Ages, contrary to those Produced by Sir Thomas.*

[Page 5.]

1. **T**hat, Lands did and might passe, in those ages, *in libero maritagio* with Bastard-daughters.

2. *That*, Gifts in *Frank-marriage* of those more ancient Ages, were not tyed up only to those of the Blood: And that Bastards in those times were reputed of the blood.

3. *That*, Though the words [*in liberum maritagium*] by the Law in later ages were required as a Term of Art, & legally to be pursued in all Grants of *Frank-marriage*; yet in the more ancient ages they were not by Law so strictly required.

4. *That*, in those more ancient Ages, Lands given with a daughter *in maritagio*, *Soluto ab omni Servitio*, &c. was good, and would passe an estate of Inheritance: And therefore, *in connubio*, *soluto ab omni Ser-<sup>6</sup>vitio*, &c. would have been then good also.

[Page 6.]

5. *That*, The words [*in libero Conjugio*] in those more ancient ages was as good as [*in libero maritagio*]: and, Lands did in those ages passe by vertue of those words accordingly.

6. That *Glanvil* doth say, that, Lands might be given with any woman *in liberum maritagium lib. 7. ca. 18.* and that *in maritagium* in those ages was all one, and often understood for the same thing with, *liberum maritagium*, where the Deed in marriage did acquit the Land from all Service towards the chief Lord, *à se & hæredibus suis*.

7. *That*, Earls and great Lords in those former ages did often joyn with their mothers (who then had the Tuition of them) in Deeds and Charters, whiles they were very young, and long before they attained the age of one and twenty years, but used then their Mother's Seal to such Deeds under whose Tuition they were, and not their own.

[Page 7.]

<sup>7</sup> And now I will prove out of *Glanvil* (who was chief Justice of *England* under *Henry the Second*) as also by clear Precedents of those Ages, all those Parcells of Law of the more ancient Ages before-mentioned, and shew the Errours and Mistakes of what is said by *Sir Thomas Manwaring* to the Contrary. So that his Ground-work failing, all the whole Fabrick erected by him in defence of *Amicia* must needs fall.

1. For the First : That Lands did and might passe in those more ancient Ages *in libero maritagio* with Bastard-daughters ;

Take here the words of *Glanvil* (who dyed *Anno Domini 1190*) lib. 7. ca. 1. *In aliâ acceptione accipitur Dos secundum leges Romanas : Secundum quas propriâ appellatur Dos, id quod cum muliere datur viro : quod vulgariter dicitur Maritagium : Potest itaque quilibet liber homo, terram habens, quandam partem terræ suæ cum filiâ suâ, vel cum aliquâ aliâ quâlibet <sup>8</sup>muliere, dare in maritagium, siue habuerit hæredem sive non, velit hæres vel non, imò & eo contradicente.*

[Page 8.]

Also, lib. 7. ca. 18. *Maritagium, autem aliud nominatur liberum, aliud Servitio obnoxium : liberum dicitur maritagium, quando quis liber homo aliquam partem terræ suæ dat cum aliquâ muliere alicui in maritagium, itâ quod ab omni Servitio terra illa sit quieta, & a se & hæredibus suis, versus capitalem Dominum acquietanda : & in hâc quidem libertate ita stabit terra illa usque ad tertium hæredem : nec interim tenebuntur hæredes inde facere aliquod homagium : Post tertium verò hæredem, ad debitum Servitium terra ipsa revertetur ; & homagium inde capietur. Quia, si fuerit pars feodi militaris, pro quantitate terræ Servitium feodi inde prestabit.*

[Page 9.]

*Solet autem quandòque terra aliqua dari in maritagio, Salvo & retento debito Servitio ipsi Capitali Domino : & tunc quidem tenebuntur maritus mulieris ipsius, & hæredes sui, Servitium id facere, sed sine homagio usque ad tertium hæredem :*

With whom also agreeth *Braeton*, lib. 2. ca. 7. (who lived in the reign of King Henry the third.) *Et est maritagium aliquando liberum, Scilicet ab omni Servitio quietum; & aliquando Servitio obligatum: liberum autem maritagium dicitur, ubi Donator vult quod terra, Sic data, quieta fit & libera ab omni Sæculari Servitio, quod ad Dominum feodi possit pertinere, & ita quod ille, cui sic data fuerit, nullum omnino faciat inde Servitium usque ad tertium hæredem.*

So then, the Law was clear in *Glanvil's* time, that any man might give part of his Land to any other in marriage with his daughter, or with any other woman whomsoever: And if with any other woman whomsoever, then certainly with a Bastard-daughter: for the words are general, without any restraint at all: and there he tells us also, that Lands given in marriage, so as they be acquitted from all Service towards the chief Lord, such are <sup>10</sup> grants in Free-marriage: and when the service due to the chief Lord was excepted, then the Heirs were bound to doe the Service, but without homage, to the third heir: wherefore in those more ancient ages Lands did passe according to Law, with Bastards in Free-marriage:

[Page 10.]

Again, *Braeton lib. 2. ca. 7.* faith, *Quoniam terra data Bastardo in maritagium, sicut & aliis, vel Bastardo per se, in se tacitam habet conditionem vel expressam de reverfone .... &c.*

So that, if lands might then be given to a Bastard-Son in marriage with any Woman (as Sir *Thomas Manwaringe* confesseth in his defence of *Amicia*, pag. 35.) why not then to any man with a Bastard-Daughter in marriage?

Sir *Thomas* hereunto answereith in the place alledged, that though *Braeton* faith, that lands may be given *Bastardo in maritagium cum aliquâ muliere*; yet, he hath not a word at all, that lands may be given to a man *cum Bastardâ*: whereas in this case of *Frank-marriage*, the Party *with whom* <sup>11</sup>the Land is given, not the Party *to whom* the Land is given, is the Principal thing that is considerable herein.

[Page 11.]

Which Answer is very superficial and insufficient: For neither

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the Party to whom, nor the Party with whom, is herein Principally considerable ; but the Party who is the Principal cause of the Donation : For whether Bastards in that Age were capable of Gifts in *Frank-marriage*, is now the Question : whether to a Bastard, or with a Bastard, it matters not ; that is the same thing : he must give a better reason to those words of *Braeton*, or it cannot be Satisfactory ; for if the Law did not then allow Bastards to be capable of Gifts in *Frank-marriage*, how is it that *Braeton* saith a Bastard-Son may have lands given unto him in *Frank-marriage*? and if a Bastard-son be capable of such a gift, why not a Bastard-daughter? And though *Braeton* mentioneth the one, yet he excludes not the other : and *ubi lex non distinguit, neque nos distinguimus* : how the Law could al-<sup>12</sup>low the one to be good, and not the other, I cannot yet apprehend.

[Page 12.]

For the Answers of Sir *Thomas*, how he would have the words in *Glanvil* [*cum aliqua alia quilibet muliere*] to be restrained only to those of the Donor's blood, I shall speak of them, when I come to the Second Point of the Ancient Law.

And in the mean time, I will shew some Precedents, clearly proving that lands did usually passe in those more ancient ages in Free-marriage with Bastard-daughters : and thereby infallibly demonstrating both the Law and Practice of those times.

1. In the first place ; See one in my book of *Antiquities*, pag. 112, 113 : where *Drayton* was given to *Geva*, (base daughter of *Hugh Lupus*, but in the Deed styled only daughter of Earl *Hugh*) by *Randle de Gernoniis* Earl of *Chester* in Free-marriage, as Earl *Hugh* gave and granted the same to her in Free-marriage : This Deed of *Randle* was made towards the end of King *Henry the first*:

[Page 13.]

Concerning which, Sir *Thomas*<sup>13</sup> *Manwaringe* saith, in his Answer to my Addenda pag. 2. he cannot but smile that I say, the gift to *Geva* was such a Precedent, considering how in his Defence of *Amicia*, pag. 43, 44, and so onwards ; and also in his Reply to my Answer, pag. 23, and pag. 45, 46, and so onwards to the 60 page ; he hath made it to appear, that it is very uncertain

that the faid *Geva* was a Bastard, but most certain that the Gift to *Geva* was not a Gift in *Frank-marriage*.

I wonder at his confidence: for I have proved her a Bastard by sure consequence out of *Ordericus*, a man that lived in that very Age with *Geva*: & nothing at all proved by Sir *Thomas* to the contrary, material to that point: for which I must refer the Reader to my Answer unto his *Defence of Amicia*, pag. 33 to pag. 41.

But let us see, how Sir *Thomas* would prove the Gift to *Geva* in Free-marriage, to be no gift in Free-marriage: I suppose, he means, that it is not a good Deed in Law: for otherwise he would be like the Gentleman <sup>14</sup>who would dispute about a Crosse, but the Question must be—whether that Crosse was a Crosse, or no Crosse: For the very words of the grant are, *in libero Conjugio*, that is, in Free-marriage.

[Page 14.]

The reasons he gives in his *Reply* to my *Answer*, pag. 57, and in his *defence of Amicia*, pag. 49, are these: 1. That the words *in libero Conjugio* make but an Estate for life, because the Lord *Cook* saith, that the words *in liberum maritagium* are such words of Art, as cannot be expressed by words equipollent.

2. The Deed to *Geva* did intend no more than an Estate for life, it running all along in the Singular number, [& *teneat bene* & *in pace*... &c.] and there being no mention of her heirs.

3. The Deed to *Geva* is made to her alone, and not to a Husband with her: whereas the Lord *Cook* saith, that one thing incident to *Frank-marriage* is that it be given for consideration of marriage, either to a man with a woman, or (as some have held) to a Woman with a man.

<sup>15</sup>4. That the Donees [by the ancient Law] were to hold freely of the Donor to the fourth degree: and that here, there are no Donees, but one Donee.

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To the First: he is horribly out, to say that the words *in libero Conjugio* in the grant to *Geva* made but an estate for life: when we see *de facto* that the Town of *Drayton* did passe to the heirs of *Geva* by that Deed, and in those very words: whose heirs

[the *Bassets*] enjoyed the same : and it is apparent, that from the *Bassets* sometime Lords thereof, it gained the name of *Drayton-Basset* for distinction, as even at this day it is called. And it is absurd for any man to say, that the Gift to *Geva* was not a Gift in Free-marriage : for thus it runnes, if we render it in English,— *Randle Earl of Chester, to William the Constable, and Robert the Steward, ... &c.* Greeting : Know yee, that I have given and granted unto *Geva Riddle*, daughter of Earl *Hugh, Drayton* with the appurtenances in Free marriage, even as Earl *Hugh* gave and granted the <sup>16</sup>same to her in Free-marriage:... &c. See the Deeds at large in my *Antiquities of Cheshire*, pag. 112, 113. And to say, this is not a Gift in Free-marriage, is to say, that a Gift in Free-marriage is not a Gift in Free-marriage ; which is very absurd : and to say, it is not a good Deed in Law, because the words are not *in libero maritagio*, whereunto (the Lord *Cook* faith) no other words can be equipollent ; I Answer, the Lord *Cook* speaks as the Law stood in his time and in late ages: which is false, if we understand it of the more ancient Ages, as is very evident by this grant to *Geva*: See more hereof in the Third Point of the ancient Law.

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To the Second : The words (*Frank*-marriage) create an estate of inheritance in themselves by Law; although it be not expressly said in the Gift to the Donees and their heirs, *Littleton, Sect. 17*: and therefore the words *in libero Conjugio* did convey the inheritance here unto *Geva* by Law: and so needed not to expresse the word [*heirs*] in the Grant : wherefore you <sup>17</sup>do not say right, that the Deed to *Geva* did intend no more then an Estate for life.

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To the Third. It hinders nothing, though the Gift be made to *Geva* alone, and in the Singular number. But say you, how can there be a Gift in Free-marriage, if there be no marriage at all ? and how can there be a marriage, if the man or Woman be alone ? It is true, that there can be no marriage if the man or Woman never were married, nor ever should marry : yet there may be a Gift in Free-marriage to one Person alone, as you see here was such a Gift to *Geva*, who had been or was now again married :

and this Gift was good, and did convey the lands to her heirs : And *Braeton* saith, lib. 2. ca. 7. Part 3, *Et Sciendum, quod terra datur aliquando ante sponsalia & propter nuptias, a patre mulieris vel alio parente, ipsi marito cum muliere aliquo vel utrius simul, scilicet tali viro & uxori sua (quod idem est) & eorum haeredibus, vel alicui mulieri ad se maritandam, &c.* And presently after : fit enim ta.<sup>18</sup>lis *Donatio ante matrimonium contractum, aliquando in ipso contractu, aliquando post contractum.* How will you conster here *alicui mulieri ad se maritandam*, if lands in this nature may not be granted to one Person alone ? The law was not so curiously woven in these ancient ages, as in the Lord *Cook's* time : and I have a copy of a Deed made about the raign of King *John*, wherein *Saher de Quency* Earl of *Winchester* gave to *Robert de Quency* his son and heir, *ad dandum in liberum Dotarium Hawifæ sorori Comitis Cestriæ, uxori ejusdem Roberti, Bucehebeiam, & Granteſſet, & Bradeham, & Herdewich... pro centum libratis Terraæ, &c.* lib. C. fol. 65. T. taken out of one of the Couchir-books in the Dutchy-Office at *Grayes-Inn London. Tom. 2. Honor five Soca de Bolingbroke: num. 26. pag. 508.*

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To the Fourth : The heirs of the Donee, being included in the Grant, are all Donees in Law : and by the ancient Law were to hold freely of the chief Lord unto the fourth degree.

2. A Second Precedent see in the <sup>19</sup>*Addenda* to my Answer pag. 3. where we may see that King *John* gave the Mannour of *Ellesmere* in *Shropshire* unto *Lewellin*, Prince of *North-Wales*, in Free-marriage with *Joan* his base-daughter, about the Sixth year of the raign of the said King : 1204.

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To this, Sir *Thomas* saith, in his *Answer* to my *Addenda*, pag. 7, that the Authors produced by me, do say that *Ellesmere* was given *in maritagio*, but do not say *in libero maritagio* : and that Lands may be given to one not of the blood *in maritagio*, but cannot be given in *Free-marriage* but with one that is of the whole blood.

But this distinction is grounded by him from a law of later ages, and not from the Law as it stood in *Glanvil's* time ; as

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anon, when I come to this point, shall more fully appear: For in *Glanvil's* time, there was no such Distinction; *maritagium aliud est liberum, aliud Servitio obnoxium*: marriage is the *Genus*: if lands were given in marriage, acquit from all Service towards the chief Lord, then was it called Free-marriage, and the heirs were not bound to do homage, <sup>20</sup>to the third Degree: But if it had the Services reserved due to the chief Lord, then the heirs were bound to do the Service, but without homage to the third heir; and then it was esteemed not Free; *Glanvil, lib. 7. cap. 18.* and then we find no other Distinction of marriage, but *Free*, and *not-Free*: and the inheritance might passe either way: and *Maritagio* in general was often used for *libero maritaggio* by ancient Historians, and so understood by them: and so it was also in old Deeds of those Ages, when the lands therein given were acquitted from all Service, towards the chief Lord, as both *Glanvil* and *Braeton* do manifest: if the words were *in libero maritaggio*, or *in libero Conjugio*, then it was as good, as to have said *in maritaggio vel Conjugio*; *tenendum libere & quiete, ab omni Servitio, à se & hæredibus suis, versus capitalem Dominum*: But if the Grant were *in maritaggio*, *Tenendum liberè & quietè ab omni Servitio, & à se & hæredibus suis, versus capitalem Dominum*; then was it the same, as <sup>21</sup>if it had been said *in libero maritaggio*; as we see plainly by the words of *Glanvil*: Wherefore the distinction of *maritagium* and *liberum maritagium* is here frivolous and not material: nor in *Glanvil's* time do we find any such distinction [of the blood, and not of the blood] as he would have, through all his book.

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Sir *Thomas* also denieth *Joan* the wife of *Lewellin* to be base daughter of King *John*, contrary to the Stream of most of our Historians: & would have King *John* to have three daughters called *Joan*: but doth not, nor cannot prove a third *Joan* at all: See my *Reply pag. 24, 25.* and herein I will joyn issue with him.

3. Another Precedent see in my book of *Antiquities, pag. 152,* mentioned also in the *Addenda* to my *Ansver pag. 3, 4:* where the Mannour of *Budiford* in *Warwick-shire*, and the Mannour of

*Suttehal* in Worcester-shire, were also given to *Lewellin* Prince of North-Wales in Free marriage with the said *Joan*: this appears by the grant of the said *Lewellin* to *John* the Scot (afterwards Earl of *Chester*) of the said Mannours *in liberò maritagio* with *Hellen* his daughter, *cum omnibus Pertinentiis, sicut Dominus Johannes Rex ea illi dedit in liberò maritagio*:

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Two Poor shifts Sir *Thomas* makes to avoid this Precedent, in his Answer to my *Addenda*: the first, pag. 8, that it is not said here in the deed — *Sicut Dominus Johannes Rex ea illi dedit in liberò maritagio [cum filiò sub Bastardò, nor yet cum filiò sub.]*

2. The Second, pag. 10, that because several Historians do tell us, that King *John* gave *Ellesmere* to the said *Lewellin* with his daughter *Joan*; yet none of them do say, that these Mannours of *Budiford* and *Suttehal*, or either of them, were given with the said *Joan*.

To the first; This is only a meer Cavill; for the words *cum Johannò filiò sub* are by common intendment so to be understood, and are as strongly here implied, as if they had been expressed in the Deed: because *Lewellin* never married any other daughter of King *John*, save only the said <sup>23</sup> *Joan*: whereby he might have these lands in Free-marriage given to him by King *John* with any other: either other daughter, or other kinswoman of King *John*. For to prove this, will be a stout Task.

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2. To the Second; Those Authors which mention *Ellesmere*, might not know of these other lands which were also given in Free-marriage, namely *Budiford* and *Suttehall*: which yet clearly appears in the Deed of *Lewellin* to *John* the Scot; see the Deed at large in my Historical *Antiquities*, pag. 152. Or if they did know it, and had no occasion to mention them; yet it is manifest by the Deed: so that the Reader may easily see what weak Answers are given by him. And here by the way, we may take notice that the words *in maritagio* in the writ of Livery aforesaid, & *in liberò maritagio* in this Deed, are both used to signify the same thing: and sheweth the distinction of *maritagium* and *liberum maritagium* aforesaid to be frivolous as to his purpose:

[Page 24.] 4. A fourth Precedent see in my *Addenda*, pag. 45. where the said <sup>24</sup> *Joan* afterwards marrying *Robert de Audley* 14 Hen. 3; had lands also in *Shephey* then given her by King *Henry the third.*

To this Sir *Thomas* in his *Answer* to my *Addenda*, pag. 16, 17. faith, that this *Joan* was not the same *Joan* who was wife to *Lewellin*: but proves it not: Let the record of *Clauf.* 14 Hen. 3, (as it is vouched by *Vincent*) be the Judg: And for his Objection, that the said *Joan* must then have two Husbands living at one time, because *Lewellin* dyed not till the year 1240, 24 Hen. 3. I have formerly in my *Addenda* given some Probability by Circumstances, vouched out of *Mathew Paris* and *Knighton*, that she was divorced from *Lewellin*: and great Persons usually married again after a divorce in those ages, as we find a Precedent of *Randle Earl of Chester* and *Constance* his first wife, in my book of *Antiquities*, pag. 144, and 146; where both parties married again after their divorce, and in the life-time of each other: and if the said *Joan* married *Robert Audley*, Anno 14 Hen. 3, then is [Page 25.] it a sure Argument that she <sup>25</sup>was divorced from *Lewellin*: & whether she were so remarried, or no, let the Authority of *Vincent* (from whom I have it) and the Record he voucheth, *clauf.* 14 Hen. 3. bear him out therein, by which he must either stand or fall.

## 2. The Second Point of the Ancient Law:

That, Gifts in *Frank-marriage* of those more ancient Ages, were not tyed up only to those of the blood: and that Bastards in those times were reputed of the Blood.

This appears by the words of *Glanvil* aforesaid, *suprâ* pag. 7, 8. Where he tells us, that lands may be given in Free-marriage with any woman whomsoever, without exception: and if the Law had then restrained such gifts to those of the blood, then surely he would have said [with any woman of the Donours blood]: but we find not any thing in *Glanvill*, that doth so limit the same.

And *Braeton* faith, lib. 2, ca. 7. *Quia frater Bastardus omnino*

*extraneus est ei quoad Successionem, licet <sup>26</sup>non quoad Sanguinem :* Wherefore a Bastard was reputed of the blood in his time, though he could not Succeed : So that, Gifts of *Frank*-marriage to be tyed up to the blood of the Donour, must be fetched from some Author of later standing than *Braeton*, and all those so produced by Sir *Thomas*, are out of dores, to prove the Law to be so in the Age of *Glanvill*.

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### 3. *The Third Point.*

That, though the words *in liberum maritagium* by the Law in later ages were required as a Term of Art, and punctually to be pursued in all grants of *Frank*-marriage; yet in the more ancient Ages they were not by Law so strictly required. This is clear out of *Glanvill*, lib. 7. ca. 18. where he tells us, that a Grant of land with any woman *in maritagio, Habendum prædictam terram sibi & hæredibus liberam & quietam ab omni Servitio, à se & hæredibus suis, versùs Capitalem Dominum*; This was a good grant *in libero maritagio*, and was as good as if the words had been *in libero marita-*<sup>27</sup>*gio*: and therefore the words of my Lord *Cook* touching *liberum maritagium* reach not the Age of *Glanvil*, so as always then to be tyed up to those very words and no other.

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### 4. *And therefore the Fourth Point:*

That, lands given with a daughter *in maritagio soluto ab omni Servitio, &c*: in those more ancient ages was good, and would passe an estate of inheritance: and by Consequence *in Connubio soluto ab omni Servitio* would then have passed an Estate of inheritance also; contrary to what my Lord *Cook* saith, That lands given *in Connubio soluto ab omni Servitio* make now but an estate for life: which is the law of a later Stamp, and will not reach the Age of *Glanvill*: For in those Ages a grant *in maritagio* (though obnoxious to Service) conveyed an estate of inheritance, as well as a grant in Free-marriage: the only difference was by the words of the Grant: when the land was given in marriage free from all Service, then it was called Free-marriage: and when <sup>28</sup>Services

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were required, then it was not in Free-marriage: yet the inheritance might passe either way, if it were granted hereditarily.

### 5. The Fifth Point:

That, the words *in libero Conjugio* in those more ancient ages was as good as *in libero maritaggio*: and lands did in those Ages passe by vertue of those words accordingly. This appears by the precedent of *Geva* before mentioned: by which Deed an estate of inheritance passed to her heirs by those words *in libero Conjugio*: See the Deed in my book of *Antiquities*, pag. 112, 113. and therefore Sir *Thomas* is horribly out to say, that the words *in libero Conjugio* did convey but an estate for life only: *vide* pag. 15. *suprad.*

So also we find the word (*in liberum Dotarium.*) [Dos is called *maritagium* in Domef-day-book: *Cook on Littleton*, fol. 31. also *Glanvill lib. 7. cap. 1.*] used in the raign of King *John*, as being the same with (*in liberum maritagium*) in a Deed in the *Couchir-*  
[Page 29.] *29* *book of the Dutchy-Office in Grays-Inne at London*, *Tom. 2. Honor*, five *Soca, de Bolingbroke. num. 26. pag. 508.* in these words—

*Saherus de Quency, comes Wintoniae, Omnibus hominibus & amicis suis, praesentibus & futuris, Salutem. Sciatis me concessisse & dedisse, & praesenti charta mea confirmasse Roberto de Quency filio meo & haeredi, ad dandum in liberum (Dotarium) Hawifiae sorori Comitis Cestriæ, uxori ejusdem Roberti, Bucehebiam, & Grantesset, & Bradewich, & Herdewich, cum omnibus earundem terrarum pertinentiis, pro centum libratis terræ: — &c. See the Deed at large in my book of Historicall *Antiquities*, pag. 133: but there it is misprinted, *Donarium*, for *Dotarium*.*

### 6. The Sixth Point;

That, *Glanvill* doth say, that lands might be given with any woman *in libero maritaggio*, *lib. 7. ca. 18.* and that *in maritaggio* in those ages was all one, and often understood for the same thing with *libero maritaggio*, where the Deed in marriage did ac-

<sup>so</sup> quite the land from all Service towards the chief Lord, *& se & hæredibus suis*. To this Sir Thomas saith, in his *Answer* to my *Addenda* pag. 31, that Mr. Glanvill did not say, that, Lands might be given with any woman *in liberum maritagium*, but only *in maritagium*.

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Glanvill there saith, that a man may give land with any woman in marriage, so that it be acquit from all Service *& se & hæredibus suis, versus capitalem Dominum*.

But land so given (faith Glanvill) *eſt liberum maritagium*.

Ergo, Glanvill saith, Lands may be given with any woman *in liberum maritagium*.

#### 7. *The Seventh Point;*

That, Earls and great Lords in those former Ages did often joyn with their Mothers (who had the Tuition of them) in Deeds and Charters, whiles they were very young, and before they attained the age of one and twenty years.

This appears by the Precedent of <sup>31</sup>Richard Earl of Chester in my book of *Antiquities*, pag. 114, 115: where he joyned with his mother in the Grant of *Wudmundesley* to the Church of *Abbington* nigh *Oxford*, whiles he was yet but twelve years old: concerning which Grant the book of *Abbington*, fol. 147 saith thus—*Ipſe Comes benefactum extulit, & ſuo deſcripto roboravit: quod deſcriptum Sigillo quidem matris Signari conſtitit: nondum enim militari baltheo cinctus, materno Sigillo literæ quælibet ab eo directæ includebantur: hæc de re quod eò annotatur, Comitissæ potius quam Comitis Sigillo signatur*. Upon which words of the Monk of *Abbington*, Selden observes in his *Titles of Honour*, pag. 786, that whoſoever was Knighted (though before the Age of one and twenty) he was esteemed as of full age in regard of Wardship or other Tuition: and the uſe being, that ſuch Great Lords were often Knighted before they were of full age: now this Earl not having as yet received the honour of Knighthood, but being a child and under the <sup>32</sup>Tuition of his Mother, for that reaſon uſed her Seal rather than his own, and to other his letters alſo.

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Sir *Thomas Manwaring* saith in his *Answer to my Addenda*, pag. 49, that *Hugh Cyveliok*, Earl of *Chester*, joyning with his mother *Maud* in the grant of *Stivinghale*, as we find it in *Monastricon Anglicanum*, the third part, pag. 226, was not in a capacity to Seal a Deed till he was one and twenty years of Age.

Let the Reader choose now whether he will believe Sir *Thomas*, or ancient Precedents, whereof that of *Richard Earl of Chester* is by me before mentioned, and *Selden's* opinion thereof: for Earl *Hugh*, joyning here with *Maud* his mother in the Grant, shows clearly that he was but a child at this time and under the tuition of his Mother: and according to the manner of those ages joyned in the grant with his Mother before he attained the age of one and twenty years: howbeit we have now no such Custome allowed at this day: see more in my *Reply*, pag. 87, 88.

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<sup>33</sup> So that all those Cases of our modern Law produced by Sir *Thomas Manwaring*, will not reach the Age of *Amicia*, nor advantage her cause one jot, nor prove the Age of *Hugh Cyveliok* to be near what Sir *Thomas* would have it to be, but rather the contrary.

And now I come to the impertinent Cases of Law, as they be vouched by Sir *Thomas*, which are nothing at all to the Point for which they are produced.

1. One we have in his *Answer to my Addenda*, pag. 13, 14, 15: that, when lands are given with a woman in *Frank-marriage* (who is the cause of the Gift) the Husband hath not the inheritance of such lands, nor so much as an estate for life therein, unless he be Tenant by the curtesy of *England*: for which he citeth *Cook* upon *Littleton* fol. 22. a. *Fleta*. lib. 3. ca. 11. *Braeton* lib. 2. ca. 11. and *Glanvil*, lib. 7. ca. 18: ergo, *Hellen* must be heir by a former wife.

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I grant all the cotations; but he runneth on a false Ground: for he <sup>34</sup>supposeth *Hellen* to be daughter of *Lewellin* Prince of *North-Wales* by a former wife, which I utterly deny: for, that he neither doth prove, nor can prove: I affirm, *Hellen* to be daughter of *Lewellin* by *Joan* base-daughter of King *John*:

and so the said *Joan*, being the cause of the Gift, those lands might lawfully passe to *Hellen* in Free-marriage according to the Opinion of the Lawyers by him cited: And so his Law-Case (which is impertinently here urged) is totally out of *dores*: It is, as if I should have said, that it is 20 miles from *Saint-Albans* to *London*, but he will prove it to be 160 miles between *London* and *York*. I have also proved *Hellen* to be the daughter of the said *Joan* in my *Reply* to his *Answer*, pag. 29. see also pag. 38, 39, of my *Reply*.

2. Another impertinent Parcel of Law we have in Sir *Thomas* his *Defence of Amicia*, pag. 59. quoting *Fleta*, lib. 6. ca. 39. Sect. 14. *Si autem Post mortem alicujus apponatur Bastardia, non allocatur: cum defunctus ad talem exceptionem respondere non posse terit*: Now if a Bastard cannot be proved a Bastard immediately after his death, because he cannot answer for himself; what reason is there to charge *Amicia* with Bastardy so many hundred years after her decease.

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See the wild impertinency herein: Because a man shall not be allowed in a Court to prove a Bastardy after the death of any Person to the outing of his heir, because such person cannot answer to the exception when he is dead; therefore no man in writing a History ought to call any man a Bastard after his death, though he hath been so called from time to time by several Historians, or though the same be certainly proved either by History or Record: is not this Peece of Law well urged to the Point?

3. A number of other impertinent Peeces of Law we find in his *Defence of Amicia*, from pag. 34. to pag. 41. Unto all which, it were a good general Answer (were none of them at all impertinently urged) that, Whatsoever is alledged for Law by any Lawyer of late ages, doth not at all prove the <sup>36</sup>same to be the Law in the Ages of *Glanvil* and *Braeton*, two of the most ancient Authors of our Law since the *Norman Conquest*, unles the same also do appear by the words of *Glanvil* or *Braeton*: and since

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whose times, the Law in Sundry Particulars is varied and altered: But I will trace these impertinent Parcels, more particularly.

First, pag. 34. of his *Defence of Amicia*, he tells us, that the words *cum aliquā aliā quālibet muliere* (which are the words of *Glanvil*) must be only understood of such a woman as is capable of a Gift in a *Frank*-marriage: which a woman that is a Bastard, or not of the blood, &c. is not: For in these kind of Gifts, as Mr. *Braeton* saith, lib. 2. ca. 11, the land so given is *liberum Tenementum uxoris, & non viri, cum non habeat nisi Custodiam cum uxore.*

[Page 37.]

Is not this a worshipfull reason to insinuate here, that *cum aliquā aliā quālibet muliere*, in *Glanvill* must be understood of any woman of the blood, because *Braeton* saith, that land given <sup>37</sup>with a woman in *Frank*-marriage is the Free hold of the wife and not of the Husband, since he hath nothing but the Custody of such land with his wife? So it would be, although the wife were not of the blood of the Donor: *John of Oakes* his wife must needs be of the kinred of the Donor, for *John of Oakes* is a very honest man.

Secondly: pag. 34 of his *Defence of Amicia* also, Sir *Thomas* conceives that *Glanvil* hath immediately contradicted himself, unles *cum aliquā aliā quālibet muliere*, by him is understood for any Woman of the Blood of the Donour: why so? because in the same Chapter, *Scilicet lib. 7. ca. 1.* and the next words, he tells us, that, none can give land to another *in remunerationem Servitij sui* to hold good after the death of the Donour, unless there be *Seisin* given in the life-time of the Donour: which is untrue, if a man having a mind so to reward his Servants, can give lands with his Woman-Servant to a stranger, or with his Woman-Servant to his Man-Servant in Free-marriage.

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<sup>38</sup> Is not here also a great connexion of Reason, that *Glanvill* hath contradicted himself? because he said before, any man may give land with any woman whomsoever in *Frank*-marriage; and now saith that, A man cannot give land to another *in remunerationem Servitij sui* to hold good after the death of the Donour without *Seisin* given in the life-time of the Donour: but let us see

the words *lib. 7. ca. 1. Quilibet etiam, cuicunque voluerit, potest dare quandam partem sui liberi tenementi, in remunerationem Servitii sui, vel loco religioso in Elemosynam, ita quod Si donationem illam Seifna fuerit Sequnta, Perpetuū remanebit illi (cui donata fuerit terra illa) & hæreditibus suis, si jure hæreditario fuerit eis concessa. Si verò Donationem talem nulla Sequnta fuerit Seifna, nihil Post mortem Donatoris ex tali donatione contra voluntatem hæreditis efficaciter peti potest, Quia id intelligitur Secundum consuetam regni interpretationem potius esse nuda Promissio, quam aliqua vera promissio vel Donatio:* So that here *Glanvill* speaks of a grant in *re<sup>39</sup> munerationem Servitii*, and before of a grant in Free-marriage; which are two several kinds of Grants: To a Deed in *remunerationem Servitii* there must be Seisin, if the land be granted away hereditarily; but without Seisin it cannot hold good after the Donour's death: But where is the contradiction? if he had been versed in the Rules of Logick, it would have told him that contradictories cannot both stand together at once and in the same respect, *Simul & Semel*, as the School speaks: *Et, contradictoriorum una pars ex necessitate est vera;* both parts cannot possibly be true: but here both parts are true: A man may give lands with any woman in Free-marriage, and a man could not grant lands in *remunerationem Servitii* to hold good after the death of the Donour without livery of Seisin: But Sir *Thomas* faith this last is untrue, if a man may give lands to his Servant in Free-marriage. I say, a man might both give lands to his Servant in Free-marriage, and by another Deed give <sup>40</sup>other lands to the same Servant in reward of his Service, and both are good by the Authority of *Glanvil*; howbeit, there must be *Seisin* upon the Deed in *remunerationem servitii*; otherwise it would not hold good after the Death of the Donour, as *Glanvil* there saith. See the impertinency of what Sir *Thomas* here brings-in, for a proof, that *cum aliquā aliā quālibet muliere*, is, understood by *Glanvil* himself for any woman of the Donours blood: Because a man could not grant lands to his Servant in *remunerationem servitii sui* to hold good after the Donour's death

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without livery of Seisin made; *ergo*, Glanvil understands *cum aliquā aliā quālibet muliere* with a woman only of the Donour's blood: and if a man could grant lands in Free-marriage with a Servant-Woman, then he might reward his Servant after his Death; which he could not doe by his Deed *in remunerationem servitii sui* without Seisin: what, then *John of Oakes* cannot Sell away his land for ever, because he is but tenant for life: *ergo*, *John of Oakes* cannot <sup>41</sup>make a Lease for three lifes whereunto by Deed he is empowered:

And then what is there further added pag. 35. by Sir Thomas, out of *Cook* upon *Littleton*, that If lands be given in *Frank-marriage* according to Law, there needs no *Seisin*: but where they are given contrary to the Law, *viz.* not to one of the Donor's blood, *Seisin* doth only make it an Estate for life: But this of *Cook* is to be understood of the Law in later ages, and not of the Law in *Glanvil's* time: for we find nothing at all in *Glanvil* or *Braeton*, tying it up to the Donour's blood only.

Thirdly, Pag. 36 of his *Defence of Amicia*, he saith out of *Cook* upon *Littleton* fol. 21. b. that, if the King gave land with a woman of his Kindred to a man in Free-marriage, and the woman dye without issue; the man in the Kings Case shall not hold it for his life, because the woman was the Cause of the gift: but it is otherwise in the Case of a Common Person:

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This is as impertinent, as any of <sup>42</sup>the rest: for we are now about the Persons to whom Gifts in *Frank-marriage* might in those elder ages be given, and not about the reversion of lands so given.

Fourthly, in the same Page 36, he saith out of *Fitz Herberts* Grand Abridgment 9 Hen. 3. *Dower* 202. *oue une feme*—my Lord *Cooke* makes no difference between those words, and these [with a Woman of his kindred]: and by the same reason *Glanvil's* words *cum aliquā aliā quālibet muliere*, are to be understood [with any Woman of his kindred onely]: and pa: 37, he quotes the Author of the Book called *The Law's Resolutions* of Womens rights, Printed 1632, who saith, that in old time, Gifts of *Frank-*

marriage were more frequent than at this day: But now as then, if a man Freely without any money, or other Consideration, gave only love or natural affection, give lands to another man with a woman, which is Daughter, Sister, or Cousin to the Donour in *Frank-marriage*, the words [*Frank-marriage*] make an estate of inheritance, &c.

<sup>43</sup> Observe, The Lord *Cook* expounds the words *oue une femme* to be a woman of the Donour's Kindred only: and the other Author, living 1632, saith, In old time gifts in *Frank-marriage* were more frequent then in our days: what of all this? Here is nothing to the point: doth either of these prove it to be law in the Age of *Glanvill*, that lands could not be given to any in *Frank-marriage* but those of the kindred only? doth not *Glanvill* himself say, that such gifts may be made with any woman whomsoever, without any restraint at all? how can then the Lord *Cook*, or any other late writer, who only speak of the Law as it was taken in later ages, restrain *Glanvills* own words? None of them affirm it to be Law in *Glanvills* time: and, if they did; they ought to prove it; or else no man is bound to believe the Lord *Cook*, or any other in that case.

Fifthly, Pag. 38, 39. Sir *Thomas* endeavours to give another reason why the words of *Glanvill* [*cum aliquā aliā quilibet muliere*] must be understood of a Woman of the blood of the Donour only: because the Author of the old Treatise, commonly called *Fleta*, lib. 3. ca. 11 *de Donationibus in Maritagiis*, doth imply that these kind of Gifts must be made to them of the kinred: his very words are these — *Est autem quoddam maritagium, liberum ab omni Servitio, Solutum Donatori, vel ejus hæredibus usque ad tertium hæredem, vel usque ad quartum gradum, faciendum: & debent gradus fit computari, ut Donatorius, primum faciat gradum; hæres ejus, secundum gradum; hæres hæredis, tertium; & hæres secundi hæredis quartum, qui quidem tenebitur ad Servitium ut ad homagium; prius autem minime, ne Donator vel ejus hæredes per homagii acceptionem à reverione repellantur: sed, in quarto gradu, pro eo quod tunc vehementer præsumitur, quod terra non*

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*est, pro defectu hæredum Donatoriorum, reversura, quia & si Propinquos hæredes non habeat, vel, cum habeat & defecerint, ad Donatorem vel ejus hæredes (qui homagium caperint) non erit terra reversura, dum tamen aliquis remotus de con-<sup>45</sup>sanguinitate appareat qui jus in hæreditatem poterit vindicare; alioquin evanescit homagium, & revertetur: Et cum de Sanguine homagium factum fuerit, ex tunc obligatur homo ad Servitium: quid servitium semper sequitur homagium, &c.*

He that can find out of this, any thing of Reason pertinent to the Point, let him; I am sure I cannot: In all these words of *Fleta*, here is nothing at all touching Kinred or consanguinity, but what relates to the blood of the Donee. He saith indeed, that although the Donee in Frank-marriage hath no near heirs; or if he hath, and those heirs fail, the land shall not revert to the Donour, or his heirs, who shall take the homage, whiles any, remote in consanguinity, appears who can challenge the right of the inheritance: otherwise the homage vanisheth, and the land shall revert: and when homage shall be made by one of the blood, from that time the Person is obliged to the Service: for the Service always follows the homage, &c. The Point is here, that any man <sup>46</sup>may give with any woman whomsoever Land in Free-marriage, as *Glanvill* saith: and here he brings in an impertinent proof out of *Fleta*, that Lands once so given cannot revert to the Donour, whiles there is any of the blood of the Donee to inherit: Is not here a pretty reason why [*aliqua alia mulier* in *Glanvill*,] must be tyed up to one of the Kinred? where he speaks of a gift in Free-marriage, and *Fleta*, of the reversion of such land after a Gift made in Free-marriage: for every body knows, that lands must needs revert, if there be no heirs of the blood to inherit.

Sixthly, *ibidem pag. 39*, See here another impertinent proof by Sir Thomas out of *Braeton*, lib. 2. ca. 7. par. 3.—*Et Sciendum quod terra datur aliquando ante sponsalia & propter nuptias, à patre mulieris, vel alio Parente, ipsi marito cum muliere aliquâ, vel utriusque Simul, Scilicet tali viro & uxori suæ (quod idem est)*

& eorum hæredibus, vel alicui mulieri ad se maritandam, &c. Which in Sir *Thomas* his apprehension is as much as to say, that this kind of Gift can only be made by the Father,<sup>47</sup> Mother, or some other Kinsman: for the word *Parent* in latine and French hath oftentimes that Signification: and of this opinion is my Lord *Cook* upon *Littleton* fol. 21. b. where he saith that, one of those things incident to *Frank-marriage* is, that the woman that is the cause of the Gift, be of the blood of the Donour: and for this he citeth in the margent (among other Proofs) *Braeton*, lib. 2. ca. 7. and *Glanvill* lib. 7. cap. 1.

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Let any sober man be judge, whether here be a word to prove what Sir *Thomas* alledgedeth it for: but rather the contrary: for a Father, or other Parent, may give lands with any woman in express terms, not to any of his kindred only, no such word at all: but it may be made to any woman alone *ad se maritandam*: and though Sir *Tho.* saith, that, in his apprehension, it is as much as to say, that this kind of Gift can only be made by the Father, Mother, or some other Kinsman; yet I believe it cannot be so in the apprehension of any other by the words of this Authority here produced by him: It is<sup>48</sup> only a wild phansy, nothing of Reason can be drawn out of any thing in *Braeton* to support it:

[Page 48.]

For the Opinion of the Lord *Cook*, I have shewed over and over again, that he speaks only how the Law is taken now, and in the later ages; and is not understood by him of the Law in the more ancient ages of *Glanvil* and *Braeton*: For then, the Law in this point appears to be contrary, even by *Glanvill* and *Braeton* both, as I have before clearly proved:

And for the Lord *Cook's* citing of *Braeton*, and *Glanvill*, in the Margent, as Authority for what he there saith; if he maketh a false cotation, or such as is not to the Point, neither I, nor any man else are bound to believe the Lord *Cook*, more then any other.

And thus I have briefly run through all the improper and impertinent Law-Cases of Sir *Thomas Manwaring*, which he called

[Page 49.] in to little Purpose, but to amuse the Reader: which being all drawn out of his book lately published, and set apart from the rest, there will remain behind but a weak and poor *Defence of Amicia*, either from History, Records, or Reason, the most proper Judges in this Case: & it is very observable, that he rarely gives an Answer to any material Point throughout all his books without a scrap of Law in the Tayle: For ever and anon he leaps into Law (as it were over hedge and ditch) as a shelter; but it cannot help him: and runneth from one thing to another, not keeping close to the Point, and catching at every small impertinent thing as the ingenious Reader may easily perceive.

[Page 50.] And whereas in his *Defence of Amicia*, pag. 25. (as he himself hath told me) three Judges have given their Opinions that *Amicia* was legitimate: and also, pag. 67, tells us that besides those Judges (of whom I had heard) who had formerly seen his Deeds, and amongst others, that worthy and Judicious Person, *William Dugdale Esq;* our *Norroy*, King at Arms, is of the same Judgment, as will appear in his Historical Dif-<sup>50</sup>course of the *Baronage of England* (which will be shortly ready for the Presse) in which, from the Authorities and Reasons there briefly cited, he concludes *Bertred* was a Second wife, and that *Amicia* was a lawful daughter of Earl *Hugh*, by a former wife, though it cannot be known who that wife was . . . &c.

[Page 51.] I say, it may be, that upon a slight enquiry, not searching into the Reasons which may be alledged *Pro* and *Con*, and especially in putting the Question, whether lands can passe with a Bastard-daughter legally *in libero maritagio*? every Lawyer will now tell us, that they cannot: But I would be glad that either he, or any other that hath asked their Opinions for him, will show me, or produce in Publicke, The Opinion of any one Judge of *England* under their own hand to the main Point of Law, viz. Whether lands did not, nor could not passe, in the Age of *Glanvill* (when the Deed to *Amicia* was made) with Bastard-daughters *in libero maritagio*? I say, I would <sup>51</sup>fain see any such Opinion, that lands

could not be so given in the Age of *Glanvill, in libero matrimonio*, attested under the hand of any one learned Judge or Lawyer :

And for what he there faith of Mr. *Dugdale's* Opinion, intended shortly for the Preffe, I wish Mr. *Dugdale* would show me any such opinion of any Judge under his hand to the Question abovesaid : otherwise it is nothing to the Purpose : and whereas he alledgedeth the Opinion of Mr. *Dugdale*, that *Amicia* was a daughter of a former wife ; if he doth not clearly prove by good Authority and Reason, that the Earl had a former wife (which I utterly deny) *Amicia* must certainly be a Bastard ; nay he must prove also in strictness, that *Amicia* was daughter of that former wife : All which must be submitted to Judicious Readers : *Hic labor, hoc opus est.*

*Mobberley  
1st. Maij, 1674.*

*FINIS.*





<sup>53</sup> *An Advertisement to the*

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*READER.*

**S**Ince these two Books were Printed, I have received the Copies of two Records in the *Tower at London*; which till now I could not procure: one of which is this following.—

Ex Rotulo Chartarum de anno sexto Regis Johannis,  
numero 32.

Charta Lewelini  
Principis Walliæ.

*Johannes Dei Gratia, &c. Sciatis, Nos dedisse, concessisse, & hac Charta nostra confirmasse Lewelino Principi Northwalliæ, in maritagium & cum Johanna filia nostra Castrum de Ellesmara cum omnibus pertinentiis suis: Tenendum ei, & hæredibus suis qui de eo & prædicta filia nostra exierint, de nobis & hæredibus nostris in liberum maritagium, salvis Conventionibus inter nos & ipsum de terra & eodem maritacio factis: Et nos & hæredes nostri prædictum Castrum cum pertinentiis suis ei, & prædictis hæredibus suis, Warrantizabimus contra omnes qui in eo jus clamare voluerint: Quare Volumus, &c. quod prædictus Lewelinus & prædicti hæredes sui habeant & teneant prædictum Castrum de Ellesmara*

[Page 54.]

*cum omnibus pertinentiis suis, bene & in pace, libere & quiete, integre,  
in bosco & plano, in pratis & pascuis, in viis & Semitis, in aquis  
& molendinis, in Stagnis et Vivariis, in Moris & Mariscis, et  
Piscariis, et in omnibus aliis locis et rebus, cum omnibus libertati-  
bus et liberis Consuetudinibus ad illud Castrum pertinentibus, sicut  
prædictum est. Testibus Domino Henrico Cantuariensi Archi-  
episcopo, G. filio P. Comite Effeæ, <sup>55</sup> Willielmo Comite Sarum,  
Johanne de Cursy: Datum per manum H. de Wellen. Archidiaconi  
Wellensis a Apud Dovorum, 16 die Aprilis, anno, &c. 6.*

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Convenit cum Recordo, Gulielmus  
Ryley Deputatus Algari May  
Militis, Februario, 1674.

By which Record it plainly appears, that this Grant to *Lewelin* with *Joane* Daughter of King *John*, was a Grant *in liberum maritagium* (in express words) of the Castle of *Ellesmere* in *Shropshire*, dated the 16 day of *April*, in the sixth year of the Reign of King *John*; which falleth in the year after the Incarnation of Christ 1204.

So that this Record cleareth me of what Sir *Thomas Manwaring* chargeth as an error in me, when I said King *John* gave *Ellesmere* with *Joane* his Daughter *in libero maritacio*. See my Reply, page 19, 20.

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It also shews the several errors of <sup>56</sup> Sir *Thomas Manwaring*, in these Particulars following.

1. To pass by his absurd and unscholar-like distinction, whereof the Members are co-incident, it shews his distinction of *Maritagium* and *liberum Maritagium* here to be frivolous: and shows also, that by the words (*in Maritagium*) in the beginning of this Deed, the same thing is understood and meant as by the words (*in liberum Maritagium*) in the body of the same Deed.

And so also it is understood in the Writ to make Livery of *Ellesmere*, dated at *Worcester* 23 die *Martii*, anno sexto *Johannis*

*Regis, Rot. Claus. 6. Johannis, membrana 7.* See in my Reply, page 20, 21.

2. Again, this Record shews the Grant of *Ellesmere in liberum Maritagium*, to be an absolute Estate of Inheritance, and not an Estate for Life only, as Sir *Thomas* doth fallaciously insinuate from the Livery made. See in my Reply more at large, *page 22, 23, 24.*

3. Thirdly, This Record doth <sup>57</sup> clearly confute the Opinions of those Judges and Heralds (if there were any such) who should affirm, that Lands could not pass in free Marriage with Bastard-daughters in the Reign of King *John*, and those more ancient Ages: for this *Joane*, the wife of *Lewellyn*, was Bastard-daughter of King *John*, as is clearly proved by the general consent of our Historians. See my Reply, page 38, 39, 40. also Sir *Tho. Mawaring's Law-Cases* mistaken, pag. 49, 50, 51.

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And if those Judges and Heralds, whom Sir *Thomas* speaks of, did only give their Opinions that they conceived *Amicia* was no Bastard, they might easily be deceived, not diving into the Records and Histories of those more ancient Ages: for Opinions not supported by good reason, are of little weight; and I am sure some very good Lawyers and Judges are of opinion, that in those elder Ages Lands did pass with Bastards in free Marriage, as well as with lawful Daughters. And indeed it is plain by ancient Precedents of those former Ages, that the Law was <sup>58</sup> then so taken. And let the Law be what it will, *Amice* was certainly a Bastard: for to argue thus, *Amice* had Lands given with her in free Marriage, ergo *Amice* was no Bastard; this is no sure consequence at the best: but, I say, it is plain by ancient Precedents, that the Law in those former Ages did allow it: and let other men be of what opinion they please, I am sure I have neither seen nor heard anything as yet to convince my reason to the contrary: And all the Heralds in *England* cannot clear *Amicia*, nor prove her lawful daughter of Earl *Hugh*, nor prove that Earl *Hugh* ever had any other Wife at all, save *Bertred* only: and that she was no daughter by *Bertred*, it is confess on

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all sides ; for then she would have shared the Lands of the Earl-dom with the other Coheirs.

[Page 59.] And therefore if *William Dugdale Esquire*, our *Norroy*, shall in his Historical discourse of the Baronage of *England*, (as Sir *Thomas Manwaring* tells us) forthwith conclude *Bertred*<sup>59</sup> to be a second Wife, and *Amice* to be a lawful daughter of Earl *Hugh* by a former Wife, or if he thinks fit to cite the Opinions of other persons therein ; I say, it will be necessary to give his Reasons, as well for his own Opinion, as for the Opinions of others particularly whom he shall so mention, for the better clearing of the truth ; because every man will then see, whether the Reasons be substantial or no : for if they be substantial, they will be convincing in themselves ; if not substantial, the truth may be better cleared in shewing their insufficiency ; and if such Reasons have not already been fully cleared, the truth may be further illustrated hereafter : but if he shall alledge only Opinions, and no Reasons for them, it will be as if I should alledge on the contrary part, that there are hundreds who are of opinion that *Amice* was a Bastard ; which without good Reason or Authority will be little satisfactory : for Opinions not supported by good Reason, are of small moment, and not to be valued.

<sup>60</sup>The other Record, which I lately received, is this.

*Chartæ 14. Hen. 3. membrana 5.*

Pro Roberto de Audley.

*Henricus Rex salutem. Inspeximus Chartam Richardi de Landa  
in hæc verba.*

*Sciant præsentes et futuri, quod ego Ricardus de Landa dedi et  
Concessi et hac præsenti Charta mea Confirmavi Roberto de Audley  
et hæredibus suis in liberum maritagium cum Johanna filia mea  
centum et tres Solidatas et quatuor generatas terræ cum Pertinen-  
tiis in Insula Scapeya. Hiis Testibus, &c.*

By this Record it appears that *Robert de Audley* had Lands

in the Isle of *Shepey* in free marriage with *Joane* daughter of *Richard de Laund*: but not a word that *Robert de Audley* married *Joane*, sometime Wife of *Lewellyn Prince of North Wales*.

So that whereas in my *Addenda*, <sup>61</sup>page 4 and also in my Reply, page 42, 43, 44. and in Sir *Thomas Manwaring's Law-Cases* mistaken, page 24. I urged the words of *Vincent*, who affirmed *Robert de Audley* to have married *Joane* sometime Wife of *Lewellyn Prince of North-Wales*; I find now by this Record (which he vouched) that *Vincent* hath grossly mistaken the Record, and hath basely abused all his Readers in this particular; and that it is false which he saith: for *Robert de Audley* never married *Joane Princess of Wales*, base daughter of King *John*. And so much for *Vincent's* mistake.

[Page 61.]

*After page 82. of my Reply, it should immediately have followed thus.*

I have observed, that when Chaplains or Clergy-men did make their Deeds to others, they never, or very rarely did apply the word (*Dominus*) to themselves in their own Deeds: as, *Ego Dominus A. B. Capellanus dedi*, &c. for such examples are very rare, if any at all.

<sup>62</sup>But in Subscriptions of the Witnesses put usually in the conclusion of ancient Deeds, or in Deeds made by other men unto Chaplains and Clergy-men as Parties or Feoffees, in such the word (*Domino*) is frequently applyed in old Deeds unto the Names of Chaplains by the Clerk or Writer of such Deeds; as may appear by these examples following.

[Page 62.]

*Sciant praesentes et futuri, quod ego Willielmus de Hallum de Comitatu Cestriæ dedi.... Dominis Gilberto de Gropenhale et Simoni del Wood Capellanus, totum manerium meum de Hallum in villa de Newton, &c. Datum 10. Hen. 4. 1410. Lib. C. folio 202. num. 43.*

*Sciant praesentes et futuri, quod ego Gilbertus de Gropenhale Capellanus dedi.... Elizabethæ, quæ fuit Uxor Willielmi de Hal-*

*tum, omnes terras meas in villa de Newton.... ad terminum vitæ suæ, &c. Datum 3. Hen. 5. 1416. Lib. C. folio 202. num. 46.*

[Page 63.]

<sup>63</sup>The Originals of these Deeds do now remain among the Evidences of the Lord *Kilmorey* concerning *Hallum*.

So that we see, though the word (*Domino*) be applied to Chaplains by the Clerks or Writers of the Deeds, yet the word (*Dominus*) was not applied by the Chaplains to their own Names in their own Deeds: infinite other examples of this nature occur in ancient Deeds.

But Knights very anciently did apply the word (*Dominus*) to their own Names in their own Deeds: as, *Ego Dominus A. B. dedi, &c.* or *ego Dominus A. B. miles dedi, &c.* and so also the word (*Sir*) is applied to their Names in their own Deeds even to this day.

[Page 64.]

So likewise though the word (*Domino*) was often applied in old Deeds before the time of *Edward* the first, unto Gentlemen of the better sort and quality, who were no Knights, as well in the Subscriptions of Witnesses, as also when they were named as parties to whom such Deeds were <sup>64</sup>made and granted; yet in their own Deeds to other men they never applied the word (*Dominus*) to their own names: as, *Ego Dominus A. B. dedi, &c.* unless such person was *revera*, a Knight, as we may see in *Edmund Lacy*, page 79. of my Reply; and also in *Rafe Manwaring* sometime Judge of *Chester*, page 6, 7. of my Answser to the Defence of *Amicia*; and also in *Geffrey Dutton*, page 11, 12. of the *Addenda* to my Answser.

7. The word *Dominus, &c.* and so as it followeth in the 83. page of my Reply.

And so much, courteous Reader, by way of Advertisement, I have thought fit to add.

3. Martii, 1674.

*F I N I S.*

A N  
ANSWER  
T O  
Two Books:

The first being stiled

A R E P L Y  
T O

Sir *Thomas Mainwaring's* Book,  
ENTITULED,

AN ANSWER  
T O

Sir *Peter Leicester's* Addenda;

The other stiled

Sir *Thomas Mainwaring's*  
LAW-CASES MISTAKEN.

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*Written by the said Sir T. M.*

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LONDON,

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House in the *Strand*. M.DC.LXXV.



<sup>1</sup>T O T H E

[A<sub>3</sub>, recto.]

# R E A D E R.

Courteous Reader,



*Pon Saturday the 12<sup>th</sup> of December last, I received from Sir Peter Leycester a Book, or Books, thus called, viz. Two Books: The first being stiled, *A Reply to Sir Thomas Mainwaring's Book, Entituled, An Answer to Sir Peter Leycester's Addenda*; The other stiled, *Sir Thomas Mainwaring's Law-cases Mistaken*: And although the one of these was dated the 14<sup>th</sup> day of April 1674. And the other the first day of May following; yet, they came not out in Print till Michaelmas Term in the same year. When I had perused the said Books, I found the <sup>2</sup>latter, to be the same in effect with the former, and scarce met with any thing in either, which he had not had in some of his Books before, and had been formerly answered; so that it was much more difficult to find out any new Matter, than to give an Answer to the same.*

[A<sub>3</sub>, verso.]

*I believe the Reader (when he remembers how Sir Peter, in his Answer to my Defence of Amicia, did declare, That he had taken leave for ever of this Trivial Controversie) will very much wonder to find him in Print, twice since then, upon the same Subjett; But for that, he supposeth*

*he hath a good Excuse: For he tells us in his Epistle to the Reader, before the first of his two Books, That although his resolution then was (viz. when he writ his Answer to my Defence of Amicia, 1673.) to have writ no more about it, (especially if I had let him alone;) yet now, contrary to his former intention, he is necessitated thereunto in his own defence, for the removal of those unjust obloquies which are since cast upon him; Whereas his Servant Mr. Thomas Jackson, in a Letter, (written, as he says, by the Command of his Master) did signifie to me, that his Master would write again, and this, before I had printed one word of my Reply: so that if we find him thus stumbling at the first, it is well, if we do not take him oft tripping, before he comes to his journies end. And for his writing again this second time, he hath an excellent Reason; For he says, pag. 16. I have published another Book since, and have (therein) taxed him already for not being just to his word; so that he cannot now incur a greater Censure from me herein, though he alter his former resolution and intention, and write in his own defence, so long as he shall henceforth judge it necessary: so that he is resolved to give me just cause to censure him, if he had not done so before. He also endeavors to apply to me that saying of the angry Man in the Comedy, which he mentions in his said Epistle; but yet he is conscious I will say as much of him, and his Reply, and thereupon submits it to the Reader; in which I shall willingly close with him, and especially if it be a Reader who is well acquainted with his temper and mine: But it is high time to leave the Epistle, and to proceed to give an Answer to his said Books.*

[A 4, recto.]

[A 4, verso.]

[Page 1.]

A N S W E R  
T O  
Sir Peter Leycester's  
T W O   B O O K S ,   &c.



Doubt not but the Judicious Reader hath long  
since observed what strange kind of Arguments  
Sir Peter Leycester doth insist upon, both in  
these last, and in all other his former Books;  
For with all the confidence imaginable he seve-  
ral times affirms, that Mr. Glanvil says, That  
Lands might be given with any Woman *in Liberum Maritagium*:  
whereas he only says, That they may be given *cum qualibet muliere in Maritagium*, as you may see in the 39, 40, and 41 pages  
of my Reply, where Mr. Glanvil's words are expressly set down.

He also says, That he hath proved *Geva* to be a Bastard, out  
of an Historian <sup>2</sup>Contemporary, by which *Ordericus Vitalis* is  
meant, and yet the said *Ordericus* hath said no such thing.

[Page 2.]

He also affirms, That the Common Law is now alter'd other  
ways than by Act of Parliament, without quoting any Author  
for what he says, although the Common Law hath always been  
the same, and as my Lord *Coke* upon *Littleton*, fol. 115. b. says,  
Hath no Controuler in any part of it, but the High Court of  
Parliament; and if it be not abrogated or alter'd by Parliament,  
it remains still. And whereas my Lord *Coke* doth also in the

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fame Book, fol. 21. b. tell us, That these words, *in liberum maritagium*, are such words of Art, and so necessarily required, as they cannot be expressed by words equipollent, or amounting to as much ; He, for all this, brags of several Precedents where Lands were given in free Marriage with Bastards, and yet proves not that those necessary words *in Liberum Maritagium*, were used in the granting of any of those Lands, or that any of those persons with whom the said Lands were given were Bastards.

[Page 3.]

<sup>3</sup>To conclude, he tells you, That *Lhewellin Prince of North-Wales*, was divorced from his Wife *Joane* the Daughter of King *John* ; and for this he can neither shew any Author or Record, but only doth dream of such a thing himself : and yet you must believe him in all these particulars, or else (as you may see in the first page of his *Reply to my Answer to his Addenda*) he will tell you, you do withstand the plainest truth of *History* and *Reason* produced.

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He also hath a fine way of *answering* ; For if he be pressed overmuch with any point of Law, he will tell you, *of his own authority*, that the Law in such particulars hath been clearly alter'd, though he cannot tell how, or at what time it was so changed. If it be a Record that puts him too hard to it, then he conceives the *Roll* from whence the Deed is written, is mistaken in such and such words, and *miswrit therein from the Original Chart it self*. And if out of any History, you tell him of any thing which he cannot answer, then he will not suffer the words to be read as they ought to be printed ; but he will fancy such expressions as will best suit with his <sup>4</sup>turn : and will also disparage the said History, although in those matters he had formerly said he did chiefly follow the same.

He doth also, to amuse those Readers that are of weak understanding, tell them of *Circumquaques*, of *bits of Law*, *pieces of Law*, brought in by the head and shoulders, *fragments of Law*, *parcels of Law* ; and in his two last Books tells me of my *impertinencies*, of my being *impertinent*, and of my speaking *impertinently*, (if one who sayes he hath counted, do not mis-

take himself) no less than Thirty times ; with several other expressions, too ridiculous to repeat here.

He also, to keep up his credit with the more simple sort of People, doth offer to *join issue with me* upon very many Points ; and gives me some strange directions to follow : which done, *he will then leave it to the World to judge, otherwise there will never be an end.* Whereas I will refer it to all judicious persons, whether his Arguments in these two Books, be not the same which he used formerly ? and whether they be not sufficiently answered by me in my other <sup>5</sup>Books ? which if so, the Controversie is already at an end.

[Page 5.]

Now for the manifestation of what I have here alledged, I shall desire the judicious Reader, when Sir Peter Leycester speaks of what Mr. *Glanvil* hath said, to take notice what is written in the 32 page of my *Defence of Amicia*, and so on to the 43 page ; as also what is written in the 39, 40, and 41 pages of my *Reply*.

When he says *Geva* is a Bastard, then I desire the Reader to peruse the 43, 44, and 45 pages of my said *Defence of Amicia*, and the 45, 46, 47, and 48 pages of my *Reply*.

When he says that the Gift to *Geva* was a Gift in *frank marriage*, or that the Town of *Drayton Basset* did pass to the Heirs of *Geva* by virtue of that Deed which *Randle Earl of Chester* made to her ; see my *Defence of Amicia*, pag. 48, 49, and 50 ; and the 55, 56, 57, 58, and 59 pages of my *Reply*.

When he says that *Foane* the Wife of *Lhewellin*, was the same *Foane* which King *John* had by *Agatha*, then read the 3, 4, and 5 pages of my Answer to his *Addenda*.

When he says, that *Ellesmere* was given with the said *Foane* in *Libero Maritatio* ; see the 6 and 7 pages of my said Book.

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When he says, King *John* had not three Daughters called *Foane*, or that *Foane* the Wife of *Lhewellin*, was the same *Foane* who was Wife to *Robert de Audeley* ; Read the 16, 17, 18, 19, 20, 22, 23, and 24 pages of the said *Answer* to his *Addenda*.

When he says, the said *Foane* was divorced from her Husband *Lhewellin*, (which no man ever said but he himself) then read

the 17, 18, 19, and 20 pages of the *Answer* to his *Addenda*, where (besides other proofs against what he says) you will find that the Adultery of *Joane*, whil'st she was Wife of *Lhewellin*, was committed *Anno Domini sequenti* to that *Marriage*, which he fancies to be the Marriage of the said *Joane* Wife of *Lhewellin* to the said *Robert de Audeley*.

[Page 7.] When he says, *Joane* the wife of *Lhewellin* was a Bastard; then see the 21, and so on to the end of the 30 page of the said Book. And although he says, page 50. that what I say concerning *Joane* the Wife of *Lhewellin* being <sup>7</sup>King *John*'s legitimate Daughter by his Wife *Hawise*, is so ridiculous, that another would be ashamed to own it: Yet I can shew under the hands of persons eminently knowing in these matters, what great satisfaction they have received in this particular, by what I have written concerning the same; also besides those proofs which I have formerly brought, he doth acknowledge that *Vaughan* in his *British Antiquities*, pag. 29. doth call her the *Daughter* of King *John*: and in a Record concerning *Budiford*, mention'd by me hereafter in this Book, she is also called the *Sister* of King *Henry III*, without the least blemish of Bastardy at all.

I might here very well make an end, but because some persons may be deceived with some of Sir *Peter*'s Flourishes, I shall (passing by his angry and uncivil Language, with which he doth ever abound) endeavor to clear some things, by which he might otherways impose upon some silly men.

[Page 8.] In the first of his two Books in his second page, he says, I had in the 55 pag. of my *Reply* to his *Answer*, said, those <sup>8</sup>Reasons of mine (there mentioned) were unanswerable; whereas I said, *they were not at all answered by him; and that the one of them was so far from being answered, that it was not understood by him, unless he only pretended not to understand it, because he perceived he could not give an answer to it;* so that it seems, in his opinion, to doubt whether he can answer an Argument, is the same thing as to say, it is unanswerable.

In his fourth and fifth pages, he wonders if I can englisch the words *in Libero Conjugio*, that I will not allow such a Gift to be a Gift *in Frank Marriage*; and yet he doth acknowledge, that a Gift *in Connubio soluto ab omni servitio*, is not a Gift *in Free Marriage*: whereas if construing might be the Rule in this Case, that might be made a Gift *in Free Marriage* as well as the other; for the word *Connubium*, as you may see in *Gouldman's Dictionary*, doth only signifie *Lawful Wedlock* or *Marriage*; and therefore is a better word than his word *Conjugium*, which signifies *Unlawful*, as well as *Lawful Conjunction*: If construing might also take place in this Case, a Gift *in Libero Conjugio*, or a Gift *in Libero<sup>9</sup> Connubio*, would be a Gift *in Frank Marriage* at this day, as well as formerly, and all other equipollent words would also amount unto such Gifts; whereas the Law, for the reason given by my Lord *Coke*, will, in this Case, allow of no such Gift, unless there be used both the word *Liberum*, and the word *Maritagium*.

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He also in the said fourth page, doth again misrecite that Argument of mine, which he doth there mention; for he says, that my Lord *Coke* saith, that these words *in Liberum Maritagium*, are such words of Art, and so necessarily required, as they cannot be *understood* by words equipollent; whereas my Lord *Coke* says, *they cannot be expressed by words equipollent, or amounting to as much*; so hard it is to get Sir *Peter* either to repeat, or understand aright.

In the seventh page he also mistakes himself very much, when he tells you, that Lands given *in Maritagium, Habendum sibi & Hæredibus suis libere & quiete ab omni servitio versus Capitalem Dominum de me & Hæredibus meis*, was a good Grant *in Free Marriage*, by the very words of *Glanvil* in those ancient Ages, and was as good as *in Liberum Marita<sup>10</sup> gium*; if he means thereby that Lands might be given *in Free Marriage*, by those words of *Glanvil*, in a Deed, without using the words *in Liberum Maritagium*; for Mr. *Glanvil* doth there only tell us what *Free Marriage* is, and it is the same now that it was then; but Mr.

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*Glanvil* doth not there, or any where else say, that Lands may be given *in Free Marriage* by those, or any other equipollent words, without using the words *in Liberum Maritagium*; and unless he says this, he says nothing for Sir Peter's purpose: And this may give an Answer to what he hath also said in his 14 and 54 pages of his first Book, and in the 26 and 27 pages of the latter of his two Books.

And whereas he doth often tell you in all his Books, that Mr. *Glanvil* says, that Lands may be given with any Woman *in Liberum Maritagium*; he as often tells you, that which Mr. *Glanvil* never said. Indeed Mr. *Glanvil* says, that Lands may be given *cum qualibet Muliere*, (with any Woman whatsoever) *in Maritagium*; but when he speaks of Gifts *in Free Marriage*, he [Page 11.] says, they may be given *cum aliqua Muliere*, (with some <sup>11</sup>Woman) and the Law, in this particular, is still the same; for Lands may now be given *in Maritagium*, with any Woman whatsoever; but Lands can only be given *in Free Marriage* with some Women, *viz.* such as are of the Kindred of him who gives the Lands.

He also very much mistakes (and wilfully I doubt) the Deed made in the time of King *John*, where he says, *Saher de Quency Earl of Winchester*, granted to *Robert* his Son and Heir, certain Mannors *ad dandum in Liberum Dotarium Hawisæ Sorori Comitis Cestriæ, Uxori ejusdem Roberti*, which Deed I shall here give you at large, as I find it in the 133 page of his *Historical Antiquities*.

[Page 12.] **S**herus de Quency *Comes Wintoniæ, omnibus Hominibus & Amicis suis, præsentibus & futuris, salutem. Sciatis, me concessisse & dedisse & præsenti Chartâ medì confirmasse Roberto de Quency Filio meo & Hæredi ad dandum in liberum Donarium Hawisæ Sorori Comitis Cestriæ, Uxori ejusdem Roberti, Bucebeiam, & Grantesset, & Bradham, & Herdewich, cum omnibus earundem terrarum pertinentiis, pro centum Libratis <sup>12</sup>terre: Et si hæc prædictæ terræ non valeant per Annum centum Libras, Ego in aliis terris meis de propriâ Hæreditate medì in Anglia, ei tantum*

*perficiam, quod plenariè habeat centum Libratas terræ per vijum & considerationem legalium Militum hominum videlicet, Comitis Cestriæ, & meorum. Et præterea Dedi eidem Roberto Feoda duorum Militum, scilicet, Feodum Matthei Turpin in Winterflawa in Wilteshire, pro servitio Feodi unius Miltis, ad dandum simul cùm terris nominatis prædiæ Hawisiæ Uxori suæ in liberum Donarium. Testibus his, Comite Davide, Willielmo Comite de Ferrars, Philippo de Orreby, Roberto de Basingham, Ricardo de Lindescia, Willielmo de Grumpington, Henrico de Braibroc, Willielmo de Syelford, David Giffard, Willielmo Picot, Hugone & Thoma & Henrico Dispenfariis, Waltero de Coventrey, Waltero Daivilla, & multis aliis.*

And now as you may see in the 29 page of his second Book, he says, That in his *Historical Antiquities*, the word *Donarium* was there misprinted for the word *Dotarium*; whereas the word *Dotarium* is not in the said Copy which he <sup>13</sup>Cites, as a knowing Friend of mine doth inform me, who, at my request, did very lately and carefully examine the same in one of the *Couchir Books* in the *Dutchy Office in Grayes-Inn*; but the word is *Donarium*, which probably the Transcriber did mistake for *Douarium*, the *u* and *n* being anciently written alike, and the *v* consonant not then used. But if the word had been *Dotarium* it would not signifie *Marriage*, as he doth fancy, although *Dos* in *Domesday Book* be called *Maritagium*; for *Dos* is twofold, and that *Dos* which is *Dotarium*, is the same with *Douarium*, which we in English call *Dower*, and is not that *Dos* which sometimes is called *Maritagium*: For this see *Glanvil*, lib. 6. cap. 1. whose words are these, *Dos duobus modis dicitur, dos enim dicitur vulgariter, id quod aliquis liber homo dat sponsæ suæ ad ostium Ecclesiæ tempore desponsationis suæ, &c.* And lib. 7. cap. 1. *In alia enim acceptione, accipitur dos secundum leges Romanas (which three last words, with some others, he leaves out in the eighth page of the first of his two last Books) secundum quas proprie appellatur dos, id quod cum muliere datur viro, quod <sup>14</sup>vulgariter*

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*dicitur Maritagium*; Now that *Dotarium*, is that *Dos* which is *Dower*, and not that *Dos* which is called *Maritagium*, you may see in Sir *Henry Spelman's Glossary* Printed at London 1664 p. 174. whose words are these:

¶ *De eo Dotis genere, quod uxoribus constituunt Angli.*

¶ *Doarium, Dodarium, Dotarium, Douarium, Dotalitium.*] Omnia recte interpretatur vernaculum nostrum **Douer**, non Latinum dos. Est enim propriè *dos*, illud quod maritus accipit cum uxore: hæc verò id quod in remunerationem dotis, reportat uxor. And Sir *Peter* very well knows, that what is given in the aforesaid Deed, was only given as a *Dower* or *Joynure*, and not as a Gift in *Free Marriage*, as you may see in the 132 page of his *Historical Antiquities*, where he thus writes:

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**H** Awife, fourth Daughter of Earl Hugh by Bertred, married Robert Quincy Son and Heir of Saher de Quincy Earl of Winchester. She had the Earldom of Lincoln, to wit, the Castle and <sup>15</sup> Honour of Bolingbroke, and all the Lands of Earl Randle in Lindsey and Holland in Lincolnshire, for which she gave 50l. for relief. On Hawise was estated for \*Joynure, Bukby, Granteffet, Bradeham, and Herdwick, as appears by this Deed in the Couchir Book of the Dutchy Office, Tom. 2. Honor five Soca de Bolingbroke, num. 26. pag. 508.

After which, he immediately doth *verbatim* recite the aforesaid Deed; let the Reader therefore judge of the integrity of Sir *Peter*, who in his new Book pretends, that the aforesaid Lands were given in *Free Marriage* to the Lady *Hawise*; and yet in his *Historical Antiquities*, doth acknowledge that they were estated for *Joynure* only, as by his words before mentioned doth clearly appear.

And whereas he says, pag. 9. that it is not absolutely true which my Lord *Coke* doth say, viz. That at this day, the words in

Liberum Maritagium, have no other words equipollent; for then a Deed in English granting Lands in Free Marriage, or a Deed in French *de terres en Frank Marriage* would be void grants; for nei-<sup>16</sup>ther of these have in strict terms the words in Liberum Maritagium, &c. wherefore certainly he understood it of a Grant in Latine: His arguing therein is very weak; for the English words *in Free Marriage*, and the French words *en Frank Marriage*, are the same words in Law, with the Latin words *in Liberum Maritagium*, though in different Languages; but the words *in Libero Conjugio*, though capable of the same construction in English with the words *in Libero Maritago*, are but equipollent to them, and so the words, *in Wedlock free from all Services*, are but equipollent to the English words *in Free Marriage*; and the French words, *en Nop sage acquite de Services*, are but equipollent to the French words, *En Frank Marriage*.

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Also by this Rule, a gift of Lands, by a Latin Deed *in Libero Maritago*, would be void, because they are not in strict terms the words *in Liberum Maritagium*; so that the Reader may see what strange kind of Arguments Sir Peter doth use.

In the 17 page, he tells me, that in the fourth and fift pages of my *Answer* to his *Addenda*, I further prove, by comparing <sup>17</sup> the age of Bertred, that Agatha could not be Daughter to the second William de Ferrars by Agnes his Wife; whereas he is pitifully mistaken, for I did go about no such thing, but did in the 3, 4, and 5 pages shew, that Joane, who was the wife of Lhewellyn, could not be the same Joane which King John had by the said Agatha, and that was all which I did there prove.

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In the 18 and 19 pages he says, that though the Writ (meaning King John's Precept to the Sheriff of Shropshire, to make Livery of Ellesmere to Lhewellin after his Marriage with Joane the daughter of King John) if you begin the year of our Lord the 25th day of March, was in the year 1204. yet it would fall out to be in the year 1205, if with ancient Historians we begin the year on the first day of January; but it would be a pretty Trick, if from either of these reckonings, he could make out

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what he said in the second page of his *Addenda*, viz. that the Marriage of the said *Lhewellin* with the said *Foane*, was in the year 1206.

[Page 18.] In his 20 and 21 pages, he thinks he gives me no quarter; for he tells me, <sup>18</sup>that *I would distinguish between Maritagium, and liberum maritagium, and say, maritagium is twofold, but I do not give the members of my distinction aright; for a good Logician* (Sir Peter is the man meant without all doubt) *would tell me, that the members of a good distinction must be opposite, and not as I distinguish, Maritagium est duplex, vel maritagium, vel liberum maritagium; The members are here coincident, for Liberum maritagium est maritagium: Glanvils distinction is good, Maritagium est vel liberum vel servitio obnoxium: so that Maritagium the genus comprehends the members, and both opposite one to another, as either free marriage, or not free marriage.* This is Sir Peter's charge, and a very great one, as he believes: But for answer hereunto, I doubt not but the Reader hath taken notice how in my *Reply*, p. 39. & 40. I did observe that *Maritagium* was two-fold, and that it was distinguished into *Maritagium liberum*, and *Maritagium servitio obnoxium*: so that when I did intend to take notice how it was distinguished, Sir Peter cannot but acknowledge that I did right; the only colour of Cavil that he hath, is, because I afterwards say, that <sup>19</sup>whensoever any Lands are given in a Deed *in maritagio* only, it is always the same thing in Law, as if they were given *in maritagium servitio obnoxium*, and it is only his want of understanding that causeth him to blame me for what I so say, for that expression will not thwart with what I said before; this will appear, because that *maritagium servitio obnoxium*, is the elder Brother to *maritagium liberum*; for when Lands are given *in maritagio servitio obnoxio*, such Gifts are agreeable to the Common Law of *England*; but when they are given *in liberum maritagium*, as you may see *Coke upon Littleton*, fol. 21. b. they *create an estate of inheritance against the general Rule of the Law*; and therefore though this younger Son be connived at, and tolerated, yet, as you may there see, *the Law requireth* that such

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Gifts be *legally pursued*, and that is the reason why such Gifts cannot be made to any but to those of the Blood, as also why the words *in liberum maritagium*, are such words of Art, and so necessarily required, as that they cannot be expressed by words equipollent, or amounting to as much: Now the Common Lawyers (as you <sup>20</sup>may see *Coke upon Littleton*, fol. 189. a.) have a Rule, that *Additio probat minoritatem*; and thereupon it is that my Lord *Coke* there tells you, that the younger Son giveth the difference; and pursuant to this Rule, when a Gift is made *in maritagio*, which is intended to be liable to services, (that being the elder Brother) they use the word *maritagio* in the Deed, and no more; but when it is given *in free Marriage*, (which is the younger Brother) according as my Lord *Coke* tells you, the word *liberum* (which is the difference) is absolutely necessary: And herewith agrees the common practice; for I never saw in all my life, where Lands were given *in maritagio*, liable to services, that the words *in maritagio servitio obnoxio*, were used in any of the said Deeds, but only the words *in maritagio*; and if they did intend that any other services should be done, over and above those services which the Law did create by the words *in maritagio*, then they did afterwards in the said Deeds, mention those other services, but else not.

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Also the word *Fædum*, or *Fee*, is twofold, *viz.* *Fædum simplex*, and *Fædum <sup>21</sup>tale*, and yet in this Case, like unto the other, *Fee-simple* being the elder Brother to *Fee-tayle*, (all Inheritances being in *Fee-simple* before the Statute of *Westminster* 2. cap. 1. as *Littleton* tells you, lib. 1. cap. 2. sect. 13.) if it be said in any Book, that a Man is seized in *Fee*, without more saying, it shall be intended in *Fee-simple*; for it shall not be intended by this word (*in Fee*) that a man is feized in *Fee-tayle*, unless there be added to it this addition *Fee-tayle*, as you may see in *Littleton*, lib. 3. cap. 4. sect. 293. And according to this Rule, our Common Lawyers do all of them constantly use the like expressions at this day; so that there is no more reason for him to tell me, that I do not distinguish aright in this Case of *Maritagium*, than

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there is to tell them, that they do not distinguish aright as to the word *Fædum*, the word *Fædum* being as much the *Genus* to *Fee-simple* and *Fee-tayle*, as the word *Maritagium* is the *Genus* to *Marriage liable to services*, and to *Frank Marriage*.

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But would any one think, if I had committed so great an Error herein, (as he would persuade the World I had done) that Sir *Peter* himself, within a <sup>22</sup>very few lines, and in the same 21 page, should really be guilty of the like offence, which he did unjustly charge me withall ; and yet you shall see that it is so, for both in his 21 page, and 55 page, he tells you, that *Maritagio* was often in those Ages, (*viz.* of Mr. *Glanvil*) understood for *libero maritagio*, both by Historians and old Deeds ; you shall therefore see how Sir *Peter*'s own argument in his 20 and 21 pages, may, *mutatis mutandis*, be thus retorted upon himself, *viz.* Here Sir *Peter* would distinguish between *Maritagium*, and *Maritagium servitio obnoxium*, and say, *Maritagium* is twofold, but doth not give the Members of his Distinction aright ; for a good Logician would tell Sir *Peter*, that the Members of a good Distinction must be opposite, and not as he doth here distinguish, *Maritagium est duplex, vel maritagium, vel maritagium servitio obnoxium* ; the Members are here coincident, for *Maritagium servitio obnoxium est maritagium* : *Glanvil's* Distinction is good ; *Maritagium est vel liberum vel servito obnoxium* : so that *Maritagium* the *Genus*, comprehends the Members, and both opposite one to another, as, ei-<sup>23</sup>ther *free marriage*, or not *free marriage* ; let Sir *Peter* therefore answer this his own Argument as he thinks fit.

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As to what he pretends in the 22, 23, and 24 pages, I did not say that the Gift of *Ellesmere* to *Llewelin*, was but an Estate for Life, it being said in the Precept, to make Livery to be an Estate *in maritagio*, (though not *in libero maritagio*) and to make Livery thereof would have been needless, if it had been a Gift *in free marriage* ; Neither is *Joane* his Wife proved to be a Bastard, so that that Precedent is out of doors ; but I did give some Reasons why that Precedent would have stood him in no

stead, if she had been a Bastard, and that a Gift in *free marriage*; and could yet say more in that particular, if occasion did require: but that not being the Case, I will forbear to say any more concerning the same.

In his 24 page, and so on to the 42, (besides some mistakes of his, which, because they are not material to the point, I will not here take notice of) he spends a great deal of time in proving, that *Hellen* the Wife of *John Scot*, was the Daughter of *Lhewellin*, by his Wife <sup>24</sup>*Joane* daughter of King *John*; whereas he did clearly prove the same, in his 28 and 29 pages, in very few words: and the same doth also appear by a Record hereafter mentioned, which very lately came to my knowledge; but yet for all that, this Precedent will do him no good, as well because the said *Joane* is not proved to be a Bastard, as also because *Budeford* and *Suttehale* were not given to the said *Lhewellin* in *libero maritagio*, as will anon appear; Sir *Peter* doth indeed tell us, that those Mannors were given in *libero maritagio* to the said *Lhewellin*, but the Deed lately belonging to *Somerville Oldfeld Esq*; doth prove no such thing, but doth only prove that the said *Lhewellin* did mistake himself, and think that they were given him in *free marriage*, when they were not so given; I therefore believing Sir *Peter*, that those Mannors were given in *free marriage* to *Lhewellin*, when they were not; and perceiving *Lhewellin* to say that King *John* had given them to him, but not telling with whom, and knowing (as appears in the 13, 14, 15, and 16 pages of my *Answer* to his *Addenda*) if they were given to him in *frank mar-*<sup>25</sup>*riage* with his Wife *Joane* the Daughter of the laid King, that the said *Lhewellin* had not power to dispose of them from his Son *David*, (who was his right Heir) could not find out any other way to reconcile every thing in this particular, but by supposing that *Lhewellin* had a former Wife who was a Kinswoman to King *John*, with whom those Lands were given, and by whom he had his Daughter *Hellen*: And what I said was by way of consequence, for I relied only

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upon my fourth Argument, as appears in the said 13 page, and brought the other three but as concurrent; And what I there believed might very well have been true, for Sir Peter proves that *Lhewellin* had a former Wife; and if his words had been true in saying that those Mannors were given to the said *Lhewellin* with the said *Joane in libero maritagio*, my words must necessarily have been true also; for I was only mistaken in *Hellen*'s Mother, by building upon that unsound foundation which Sir Peter did there lay.

[Page 26.] But mark what work Sir Peter doth make of it, now he hath proved *Hellen* to be *Lhewellin's* Daughter by his said <sup>26</sup>Wife *Joane*; for he in his 37 page grants all my Quotations, (I would I had cause to say the like by him) and also grants what by those Lawyers is said in the 14 and 15 pages of my *Answer* to his *Addenda*, which is a certain sign he doth not understand what they do say; for by what is there said, it appears, that if a Man have Land given him *in free marriage* with a Wife, he hath only *custodiam cum uxore*, and hath not so much as an Estate for his own life, until he be Tenant by the courtesie of *England*, and by consequence he cannot dispose of those Lands to any person whatsoever from the next Heir; And this ignorance of his runs him upon his mistake in the 36 and 37 pages of his latter Book, wherein he says, that a man would have but *custodiam cum uxore*, although the Wife *were not of the blood of the Donor*: whereas you may see in the 14 and 15 pages of my *Answer* to his *Addenda*, that though when Lands be given with a Woman to a Man *in frank marriage*, it is *liberum tenementum uxoris, & non viri, cum non habeat nisi custodiam cum uxore*, yet it is (*secus*) otherways, when the Land is given in marriage, *pro homagio*<sup>27</sup> & *servitio viri*, and one reason of this difference betwixt Land given *in marriage*, for which no service is to be done, and Land given *in marriage*, for which *Homage* is to be done, is because in the one Case, the Land may *revert* to the *Donor*, but in the other Case, the Land can never *revert*, as you may find in *Glanvil*.

lib. 7. cap. 18. who, after he hath told you what *free marriage* is, hath these words: *Cum quis itaque terram aliquam cum uxore sua in maritagium ceperit, si ex eadem uxore sua hæredem habuerit filium, vel filiam clamantem & auditum infra quatuor parietes si idem vir uxorem suam supervixerit, sive vixerit hæres sive non, illi in vita sua remanet maritagium illud, post mortem vero ipsius ad donatorem vel ejus hæredes est reversurum. Sin autem ex uxore sua nunquam habuerit hæredem, tunc statim post mortem uxoris ad donatorem vel hæredes ejus revertetur maritagium. Et hæc est quædam causa quare de maritagio tali non solet recipi homagium. Si enim sic donata esset terra aliqua in maritagium vel alio modo quod inde reciperetur homagium tunc nunquam de cetero ad donatorem vel ejus hæredes licite possit reverti ut supradictum est.* Sir <sup>28</sup>Peter therefore must either confess that *Lhewellin* had no power to dispose of those Lands in such manner as he did, and then that Precedent will be of no more force, (if the said *Joane* had been a Bastard) than a Precedent would be of a Man who now should give Lands *in libero maritagio*, to one who is not of the blood, or else he must acknowledge that those Lands were given to *Lhewellin* but *in maritagio*, and so he being liable to do *homage* for them, might dispose of them as he did please; And that they were given to him but *in maritagio*, will appear, as well by the making of Livery of them (which is needless in a Gift *in frank marriage*) as also by these following Records.

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*Claus. 2. H. 3. M. I.*

**M**Andatum est Vic: Warr: quod plenam seifnam habere faciat Leolino Principi Norwall: de Villa de Budiford cum pertinentiis suis quam Dominus Johannes Rex Pater Domini Henrici Regis dedit ei in Maritagium cum Johanna Sorore Henrici Regis uxore ipsius Leulini. Test. \* Comite apud Westm. 10. Oct.

\* Scilicet Willielmo Marescallo Comite Pembrochiae tunc Rectore Regis & Regni.

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*29 Rot. Pip. de ann. 2. H. 3. Warr. & Leic.*

**W**illielmus de Cantilupo Philippus de Kinton *pro eo reddit comp. de cxxvii. li. ii. s. bl. de firma de Warewick: & de quater viginti & quinque libris xvi. s. iiiii. d. bl. de firma de Leicestreshire.*

— *Et Leuelino Principi Norwall: lxxvi s. in Budiford in maritagio cum Johanna uxore sua, de dimidio anno per Breve Regis.*

But the Deed to *John Scot Earl of Chester*, might be either *in liberò maritagio*, according to the agreement of *Lhewellin* with *Randle Earl of Chester*, or else it might be *in maritagio* only, as it was given to the said *Lhewellin*; so that be that Deed how it will, it will work nothing in the Case.

In his 57, 58, and 59 pages, he seems much displeased with what I tell him in the 33 page of my *Answer* to his *Addenda*, concerning his partiality, and doth in some respects strain my words further than he should; But though I will not say any thing at this time con-<sup>30</sup>cerning this particular, for some reasons I have formerly told him of, yet if he doth please to speak of it to me at any time, when any judicious person is present, I think I can make good what I said, and that he will not be excused by that contradiction of his, when he says, page 58 and 59, that *Admit he were partial never so much, in what I charge him with, yet he hopes what he hath written, I find it impartial to all, so far as he goes, or doth know.*

In his 60 and 61 pages, he tells me, that I go to excuse an Error of mine, in calling *Ralph Mainwaring Chief Justice of Chester*, because I found in his *Historical Antiquities*, page 160, and also in other places, there were in the time of *Hugh Cyveliok*, sometimes two Justices of *Chester*, and sometimes but one; But I did not absolutly say, there were two Justices living both together in the time of the said *Ralph*; I only did insinuate, as you may see, in the 5 page of my *Reply*, and the 34 page of my

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*Answer* to his *Addenda*, that it was possible there might be more than one at a time, because when Earl *Hugh* was living I found some Deeds, directed *Justiciariis*, and <sup>31</sup>I am sure the reasons which he gives to the contrary in the 61 page of the first of his last two Books are very strange ones ; for he says that it is there to be understood of the Judges, &c. *successively or with their Deputies under them* ; Now how can any Deed be directed to any Justice and his *Successor*, before he hath a successor ? or to their Deputies under them, if what he says in the same page be true, that *then they executed their places themselves, no power being given to them in those ages to make or constitute a Deputy (by Commission) at pleasure, as we have now, and in these latter ages hath been usually done* ? Neither doth he mend it afterwards, for he says, *possibly upon an emergent occasion, the Antient Earls might constitute another Judge for the present in the absence of the other, to execute the place for a time, and so change them as oft as was thought good* : Now if this conceit of his be true, that another Judge was constituted for a time, only in the absence of the former, were there not then two Justices at one time ? so that here are three very weak Answers given thereto ; But I shall now make it further appear, that there was sometimes a *Chief Justice of Chester* in those elder Ages, which I will thus prove.

[Page 31.]

That the word *Justitia* (which then is of the Masculine Gender according to that Rule, *Mascula nomina in a dicuntur multa virorum*) was sometimes in those elder Ages used for the *Judge* or *Justice of Chester*, I believe he cannot deny, because in his *Historical Antiquities*, page 144, I find a Deed thus directed ; Ranulphus *comes Cestriæ, Constabulario suo, & Dapifero, Justitiæ, & Vicecomiti Baronibus & Ballivis suis, salutem*. I also in the 143 page of the said Book, find this Deed following :

[Page 32.]

**R** Anulphus *Dux Brittanniæ, & Comes Cestriæ & Richmondiæ, Omnibus tam præsentibus quam futuris qui Chartam istam viderint & audierint, Salutem. Sciatis quod ego dedi & concessi Andreæ Filio Mabiliæ, & Hæredibus suis, ut sint liberi & quieti*

R R

*de me & meis Hæredibus de Teloneo per totam terram meam, & in aqua, & in terra, & in Civitate Cestriæ, & extra, & a Brevibus portandis, & a Prisonibus capiendis & custodienis, & a Namis capiendis, & a Vigiliis faciendis nocte vel die, & a cæteris hujusmodi con-*<sup>33</sup>*fuetudinibus & exactionibus, nec de querelâ aliquâ in*

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\* Note. *Civitate Cestriæ, vel extra, respondeant in præsentia mea, & vel summi Justitiæ mei : Et super forisfacturam meam x Librarum prohibeo, ne aliquis eos de supradictis libertatibus impe diat vel inquietet, sed eas libere & quiete teneant, Reddendo mihi & Hæredibus meis annuatim vi Denarios ad Festum Sancti Michaelis. His Testibus, Bertrœ Comitissa Cestriæ, Radulfo de Meinevarin, Radulfo Seneschallo, Hugone de Boidele, & Alano fratre ejus, Roaldo, Roberto cam. Roberto Saraceno, Ranulfo Dubeldai, Nicolao filio Roberti, Thoma fratre suo, Willielmo Marmiun, Ricardo Poibel, Rogero Clerico, & multis aliis. Apud Cestriam.*

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And now let any person judge whether those words *in præsentia mea, vel Summi Justitiæ mei*, do not clearly prove, that there was a *Chief Justice of Chester* in those elder Ages ; for that Deed was made in the time of the said *Ralph Mainwaring*, he being a witness to the same. And as I have proved in the fifth page of my *Reply*, that if there were then two *Justices*, the said *Ralph* was the <sup>34</sup>*Chief* ; so it will also easily appear, that the said Deed was made when the said *Ralph* was Judge ; for you may find in Sir Peter's *Historical Antiquities*, pag. 143, & 144. that *Randle Earl of Chester* did first write himself Duke of *Britain* in the year 1187, and did relinquish that Title in the year 1200. And you may see in the 172 page of the said Book, that *Philip de Orreby* (who immediately succeeded the said *Ralph*) was not made Judge till about the year 1209.

In the 62 and 63 pages, he thinks that he hath at last found out a fine device to cure what he formerly said ; for whereas I told him (page 9. of my *Reply*) that I could not imagine how it was possible that the said *Geffrey de Dutton*, to that, or any other

Deeds of his own, could have his name either with the word *Domino*, or without, either five times for once, or at all, amongst the Witnesses subscribed, unless he did fancy that he was a Witness to his own Deeds : He now pretends, that when he said *he had seen several other Deeds of the same person*, he meant and understood, *several other Deeds touching the same person : for the word (of) is used many times for concerning, as, of or con-*<sup>35</sup>*cerning the same person, &c.* which Answer of his doth not at all make the matter better than it was before ; for, as Men do not use to be Witnesses to their own Deeds, so they did not use (and especially in those ages when the Deeds were so short) to be Witnesses to Deeds which concerned themselves ; And though he may possibly shew me a Deed made concerning a *Geffrey de Dutton*, to which a *Geffrey de Dutton* was a Witness, because there were several *Geffreys de Dutton* living at that time ; yet he must excuse me, if I do not believe that he can shew me either several Deeds, or any one Deed in that age which doth concern a *Geffrey de Dutton*, to which that *Geffrey de Dutton* was a Witness, who was the Party concerned.

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In his 64 page he says, what he said in his *Addenda*, p. 11. is not contrary to what he did write in the bottom of the fifth page of his *Answer to the Defence of Amicia*. Let the Reader therefore fee how Sir *Peter* says in the 11 page of his *Addenda*, that, *Geffrey Dutton* was no Knight ; *For otherways he would have called himself by his Title, as, Ego Galfridus* <sup>36</sup>*de Dutton Miles, or, Ego \*Dominus Galfridus de Dutton dedi, &c. which few Men will omit in their own Deeds, if they have really the honour of Knighthood.* And let him also observe, how at the bottom of the fifth page of his said *Answer*, speaking of the word *Domino*, he says, *that word is never used in old Deeds by the party himself, but where it is \*joined with another word, as, Ego Willielmus Manwaring Dominus de Peover* ; and then let him judge whether those expressions be contrary to each other, or not.

[Page 36.]

In his 65 page he says, that I would fain palliate another gross

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mistake, in making *Geffrey de Dutton* the Father, to live on to be a Witness to the Deed of *Geffrey de Dutton* to his Daughter *Margaret* of the Mannor of *Nether Tabley*; but if the Reader please to see the 36, 37, 38, and 39 pages of my *Answer* to his *Addenda*, it will there appear to be very uncertain, whether it was any mistake at all: And he himself after he hath said all he can, doth confess in the 67 page of the first of his said two Books, that his Deeds do but *probably*<sup>37</sup> demonstrate, that *Geffrey Dutton* the Father was dead before; see therefore what a stir he keeps about nothing, for it is not material whether this be a mistake or not. And whereas he pretends page 68, that it is *petitio principii* to say, that the word *Dominus* doth always shew, that the person to whose name it is applied, was a Knight, or Clergyman; yet I have shewed that it is usually applied to such persons, which is the only proof that can be had in this Case; and it lies upon him to prove, if he will contradict me therein, that it was so applied to some one, who was neither Knight nor Clergyman; for of the higher Nobility I do not speak, to which kind of persons the word *Dominus*, either as it signifies *Lord* or *Sir*, might sometimes be applied: And though he says that those very worthy persons Mr. *Wood* and Mr. *Bhunt*, are of opinion that the word *Domino* was sometimes also prefixed in those elder ages to the names of persons of better fort and quality, though no Knights, as well as to Knights and Clergymen, contrary to the opinion of some other skilful men, (as learned persons do sometimes differ from each other;) <sup>38</sup>yet he doth not instance in any one example to make good what he says, and it will be a very hard matter so to do; for the proving that the word *Dominus* hath been prefixed to a persons name, and sometimes afterwards omitted, will not be sufficient, because I can prove that some who were certainly *Knights*, have been afterwards named without having the word *Dominus* prefixed, or the word *Miles* added to their names.

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In the 39 page of my *Answer* to his *Addenda*, I told him of some words, which he pretended to have written, which I could not find in his Book; and for this in the 69 page of the first of

his two Books, he says I would bespatter him with a falsity therein, although in the 70 page, he confesses those words were not in his *Answer* expresly, &c. and that it was a negligent error; and yet for all this, in the 64 and 65 pages of the first of his new Books, he pretends that the words *Ego Dominus A. B. dedi*, &c. (which were some of the words I could not find in his said Book) were spoken of before, in the 7<sup>th</sup> page of his Book there mentioned, so that he commits the same Error again.

<sup>39</sup> In the 68 page, he again takes notice how I had formerly said, that *Margaret* was the Daughter and Heir of *Geffrey Dutton*, whereas he says she was his Daughter, but not Heir, and this he calls a gross mistake of mine; but a gross mistake it cannot be, because the said *Margaret* and her Heirs did enjoy several Mannors which were her Fathers, and because it is not material to the point in hand, whether she was or was not his Daughter and Heir. And whereas he is displeased at me for saying, *if it was any mistake at all*, he must thank himself for that; for since he did so untruly quote the Book of *Barlings*, and so many other places, he must excuse me, if I dare not rely too much upon his bare word.

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In his 67 page, he doth confess he calls one, Sir *Geffrey Dutton* of *Chedil* in his Book: but he calls him not Sir *Geffrey Dutton* of *Chedil Knight*, as I alledge; whereas I cannot imagine what he should be but Sir *Geffrey Dutton* of *Chedil* Knight, being he was no Clergyman, unleſs he would have him to be Sir *Geffrey Dutton* Esq; or Sir *Geffrey Dutton* Gentleman. And though he pretends, <sup>40</sup> page 73. that *Esquires were none in those ages*, I shall refer the Reader for that to Mr. *Selden's Titles of Honour*, pag. 830, 831, &c. Though I confess the word *Esquire* doth not often occur as a legal Addition, till after the Statute of Additions made in the first year of King *Henry V.*

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From the end of the 73 page, to the end of the 84, instead of producing an Example where the word *Dominus* was applied to the name of a Layman, who was but an Esquire or Gentleman, (which was the thing which he ought to have done) he vainly

spends his time in acquainting you with some Notes of his, in Manuscript, never yet printed, on the several Notions of the word *Dominus*, and the English word *Sir*; but as he hath there omitted some things to which those words were used to be applied, so he went too far, when in his 77 and 79 pages, he applied to the Lady *Hawise de Quency* the word *Dominus*, and the word *Sir*.

[Page 41.] In his 86 page, and so on, to almost the end of the 89, he would fain perswade the Reader, that *Hugh Cyveliok* was not One and twenty years of age <sup>41</sup>when he joined with his Mother *Maude* in giving *Stivinghale* to *Walter Durdent* Bishop of *Chester*, and his Successors, to which Deed *Eustace* the Constable was a Witness, and tells you of a Precedent in his Book of *Antiquities*, pag. 114. & 115. where you may find *Richard Earl of Chester* joining with *Ermentrude his Mother in the Grant of Wudemun-deslai to the Abby and Church of Abington in Barkshire, Anno 6. Henrici I. Anno Domini 1106. whiles he was scarce 12 years old,* whereof the Book of Abington immediately before the Deed, saith thus, fol. 47. *Ipse Comes benefactum extulit, & suo descripto robavit: quod descriptum Sigillo quidem matris Signari constitit: nondum enim militari Baltleo cinctus, materno Sigillo literæ quælibet ab eo directæ includebantur, hac de re, quod eò annotatur, Comitissæ potius quam Comitis Sigillo signatur.* But he doth not give you the Deed in either of his two little Books, therefore I think fit to Transcribe it here, for the satisfaction of those who have not seen the same, as I find it in his *Historical Antiquities*, pag. 114. but misprinted 122.

[Page 42.] <sup>42</sup> **R**icardus Cestrensis Comes, & Ermentrudis Comitissa mater ejus, Nigello de Oilli, & Rogero filio Radulfi, & omnibus Baronibus de Oxenford Scira, Salutem & Amicitiam. Sciatis quia pro amore Dei & anima Patris mei, & remissione nostrorum Peccatorum, Concedimus hidam illam, quam Droco de Andeleid dedit Ecclesiæ Abbendenensi, quæ est in loco qui dicitur Wudemun-deslai: Nos eidem Ecclesiæ concedimus & autorizamus perpetuò

*habendam, solidam & quietam ab omni nostro servitio: Et Rogerus filius Radulfi & Successores ejus sint quieti in nostro servitio, quantum ad illam hidam pertinet: Et defendimus, ut nullo modo Rogerus, vel alias per eum, inquietat habitantes in terra illa: Hoc autem fecimus & testimonio nostrorum Baronum; scilicet Willielmi filii Nigelli, & Hugonis filii Normanni, & Ricardi Balaste, & Willielmi filii Auskitilli, & Ricardi filii Nigelli, & Domini Goisfridi Capellani & aliorum. Hoc actum est in sexto Anno Regni Henrici Regis, in mense Maii, in die Pentecostes.*

And to make the Reader believe that *Hugh Cyveliok* was not of age when he <sup>43</sup> sealed the said Deed of *Stivinghale*, he tells you pag. 86. of his first Book, and pag. 30. of his latter Book, that what Earl *Richard* then did, was according to the Law and *Customs* of those elder Ages, and *that Earls and great Lords in those former Ages did often join with their Mothers (who had the Tuition of them) in Deeds & Charters whiles they were very young, and before they attained the age of One and Twenty years*; whereas I am confident Sir *Peter* cannot prove, that persons who were under age, did then use to join with their Mothers, and so give away their Lands of Inheritance; for Mr. *Selden* in his *Titles of Honour*, pag. 785. at the bottom, and pag. 786. (the place which Sir *Peter* cites) tells us, *that this of the Earl of Chester, (viz. Earl Richard) is only a Note of a Monk after the Entry of the Charter of Confirmation, and no part of the Body of the Charter; And in regard that he sees no other Testimony of ancient time to second it with the like, he should think that the Monk was either grossly deceived in his reason of Nondum enim Militari Balteo cinctus est, or else that he meant only that the Earl was a Child within age, and that <sup>44</sup>by reason of his Minority, Wardship, and the Tuition of his Mother (who joineth with him in the Charter) her Seal was only used to it, as also to his Letters; Also a little aster, in the same page, Mr. *Selden* thus says, Now the Law being that whosoever was Knighted, though before the age of One and Twenty, was of full age in regard of any Wardship, or any other Tuition*

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(as presently is further shewed) and the use being that such great Lords were Knighted often, before they were of that age, and so had their full age supplied; and that perhaps also, while they were inward, they used only their Guardians Seals, left the authority of a

\* Note. Seal of their own, before they had discretion to use it, might have done them prejudice, in point of \*honour at least, if not in matter of profit. It is likely enough, that the Monk here took the phrase of being not Knighted, to serve for being not of full age; So that the having of a Seal was not peculiar to this Order of Knighthood, but to such only (of what condition soever) as were of full age: Also Sir Peter doth not in either of his two new Books

[Page 45.] give you the *Charter* of this Earl *Richard* and his Mother, but only tells you of it in general terms; for he <sup>45</sup>cannot but see that it is not a selling or giving away any Land of Inheritance, but is only (according to Mr. Selden) a confirming of that Hyde

of Land which *Droco de Andeleia* had given to *Abington Church*; And Mr. Selden a little after in the next page says, though the wardship of the Body be ended (in the case of Knighting after the

\* Note. death of the Tenant by receiving the Order of Knighthood) yet \*the Land continues to the Lords, until the full age of

the Heir, as if he had not received the Order. What then is this to the Case of *Hugh Cyveliok*, who did pass away *Stivinghale* to the Bishop of *Chester*, and his Successors for ever? And without doubt the said Land was given immediately after the death of Earl *Randle*, Father to the said *Hugh*; for he dying Excommunicate, his friends in that age, would be very impatient until he was absolved; and it cannot be imagined that *Maude* did join with her son *Hugh*, because he was under age; for that he could not be, because he here passed away Lands for ever, as also because he was old enough to take *Melyenith Castle* in the year 1142;

[Page 46.] and if he was then but 12 years of age, he would <sup>46</sup>be 23 years old in the year 1153, about which year his Father Earl *Randle* dyed; his Mother therefore certainly had *Stivinghale* (which is not in *Staffordshire*, as Sir Peter in his 86 page supposeth, but is a Member of *Coventry*, as you may see in Mr. *Dugdale's Anti-*

*quities of Warwickshire*, pag. 88, 128, 129. and in Sir Peter's *Historical Antiquities*, pag. 129.) as part of her Joynture, and thereupon joined with her Son; And indeed it had been a great shame to her if her Son *Hugh* had been such a tender Infant as Sir Peter doth suppose him to be, to make him part with those Lands, upon that occasion (if it could have been so done) and she to part with nothing at all.

But though I doubt not but what is here said, will give full satisfaction to all judicious persons, yet I think fit to acquaint the Reader that I have a *Pedigree* by me, of the Barons *de monte alto*, drawn not long since by Sir Peter himself, and written all with his own hand, in which he makes the first *Robert de Monte alto*, Steward of *Cheshire* (who, he says, lived in the time of King *Steven*) to have issue (besides other Sons who were youn<sup>-47</sup>ger) two Sons, *Ralph* and *Robert*, who were afterwards successively Stewards of *Cheshire*, all which is certainly true.

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He also in his *Historical Antiquities*, pag. 131. doth give you this Deed of Earl *Hugh*, in which his Mother doth not join with him, which I think fit in this place to Transcribe.

**H**ugo Comes Cestriæ, *Constabulario suo, Dapifero, omnibus Baronibus suis, omnibus Hominibus suis, Francis & Anglicis, tam futuris quam præsentibus, Salutem. Concedo Sanctimonialibus de Bolintonæ Stagnum meum de Dunintonæ firmum terræ meæ sicut fuit tempore Henrici Regis, in perpetuam Elemosynam pro anima mea, & Patris mei, & meorum Antecessorum: Et præcipio omnibus Hominibus meis, quod habeant meam firmam pacem, ita quod nullus inde prædictis Sanctimonialibus injuriam vel contumeliam faciat. Teste Roberto Dapifero de Monte alto, Filippo de Kima, Simone Filio Osberti, Willielmo Patric, Radulfo Filio Warneri, Rogero de Maletot, Johanne Priore de Trentham, Orm ejus Canonico, Rogero Monacho de Hambi, Willielmo Clerico Comitis qui Chartam scripsit apud Beltesford, & multis aliis.*

SS

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48 Now that *Robert de Montealto* Steward of *Cheshire*, who was Witness to this Deed, was the first *Robert de Montealto*, will be manifest, because the second *Robert* came not to be *Steward of Cheshire* during the life of Earl *Hugh*, as appears by the said *Pedigree*, as also in Sir *Peter's Book of Historical Antiquities*, pag. 143. and in the 33 page of this Book, where you find *Ralph* the Steward, elder Brother to the second *Robert*, outliving Earl *Hugh*, and being a Witness to a Deed of *Randle* Son to the said *Hugh*; it will therefore necessarily follow, if this Deed of Earl *Hugh* was made immediately before the death of that *Robert de Montealto*, who was a Witness thereto, that the said Earl *Hugh* was a great deal elder than his Wife *Bertred*; for though the said *Robert* did live something longer than Sir *Peter* doth take notice of, yet I think it cannot be proved that he was living any considerable time after the said *Eustace*, and I know no reason why we should conclude that *Eustace* was slain immediately after he was a Witness to the other Deed, or that this *Robert* dyed presently after he was a Witness to this Deed; nay, I think it

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49 will appear, that the aforesaid Deed to the Nuns of *Bolinton*, was certainly made some years before the said *Robert* dyed, viz. in the time of King *Stephen*; for if it had been made when *Henry* the Second was King, Earl *Hugh* would not have said *sicut fuit tempore Henrici Regis*, (as he there doth) but he would have said, *sicut fuit tempore Henrici primi*, or else he would have used some other words to distinguish King *Henry* the first from the then King. Now King *Stephen* dying in the year 1154. and *Bertred* being not born till the year 1157. it will from this Deed be very clear, that if Earl *Hugh* had sealed the said Deed immediately before King *Stephen* dyed, yet Earl *Hugh* would be at the least 24 years older than *Bertred* his Wife.

And whereas he pretends that he shews, (pag. 93.) that Earl *Hugh could neither be so old as I would now suppose him, nor yet that he was born Anno 1142.* I answer thereto, that any man who can but count 20. (viz. how long it is from the year 1109. to the year 1129. or from the year 1110. to the year 1130.) if he looks

on my *Defence of Amicia*, pag. 51. and my *Reply*, pag. 61, 62. may find that <sup>50</sup> Hugh Cyveliok might be older than I say: But I doubt Sir Peter is no good Arithmetician, as well because of what he says here, as also because he says in his *Historical Antiquities*, pag. 137. (which words you may also find before my *Defence of Amicia*, pag. 14.) that he was eight years older than his Wife, when he was married; whereas he is not now much above six years older, for as you may see in his *Historical Antiquities*, pag. 361. he was born the third of *March*, 1613. and his Lady was baptized the 23 day of *May*, 1620. And I believe Sir Peter will acknowledge he reckons his own birth, not according to the Julian, but according to the account of the Church of *England*; and if he should say otherways, he might be easily confuted: for as you may find in the said 361 page, he had a sister named *Margaret*, who was born *September* 29, 1612. and buried at *Great Budworth*, *Octob.* 12, 1612. so that Sir Peter could not be born the third day of *March*, 1613. according to the Julian account; for then his birth would have been but a little above five months after his said sister was born.

<sup>51</sup> And whereas in the 49, 50, 51, 52 pages of my *Answer* to his *Addenda*, I have proved out of the *Welsh History* written by *Caradocus Llancaruan*, that Hugh Cyveliok in all probability had another Wife before *Bertred*, because he could be no less than 41 years of age when he married her, (although we suppose that he married her so soon as she was 14 years old) Sir Peter to avoid this proof, doth endeavour all he can to disparage Dr. *Powell* who did put out the said *History*, and writ Notes thereon; but he was not so contemptible a person as Sir Peter would make him, for Mr. *Wood* in his *History and Antiquities of Oxford*, lib. 2. pag. 319, doth call the said Doctor, *Rerum Antiquarum rimatorem industrium, atque Historiarum Britannicarum peritissimum*: and Sir Peter doth also very well know that it is not the Doctor, but *Caradocus Llancaruan* which I do cite; he also will not suffer the said Book to be read as it should have been printed, but would have it read according as he doth please; which liberty if

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he may take, he hath very ill fortune, if he cannot keep it from saying any thing contrary to his own mind ; then he will read it, not as it <sup>52</sup>ought to have been printed, but as it is misprinted, and thinks he shews a great deal of skill, in proving that it cannot be true as it is misprinted, which every one will confess as well as himself. And lastly, although in his *Historical Antiquities* in the Fifth Chapter, concerning the Kings of Wales, and Princes of Wales, in which Chapter he did quote *Ingulphus*, *Ordericus*, *Cambden*, *Matthew Paris*, and others, and did tell you there in his 44 page, that in these Welsh matters, he did chiefly follow the Welsh History put out by Dr. Powell, 1584. yet now he will also disparage the said History all that he can.

But that he may seem to have some reason for what he says, he will tell you, that in that very place where *Caradoc* speaks of taking *Melyenith*, he also says, that at that time King *Steven* took *Geffrey Mandevile* Prisoner at St. *Albons*, whereas *Mat: Paris* sub anno 1142. says, it was *William Mandevile* who was there taken, and therefore he will not have *Caradoc* to be believed in other things ; but this which Sir *Peter* here says will be of no force, first, because though *Mat: Paris* be a very good Author, yet *Caradoc*<sup>53</sup> (if there was nothing else in the Case) ought to be believed before the said *Mat: Paris*, because the said *Caradoc* was living when the said *Hugh* did win *Melyenith*, and when the said *Geffrey de Mandevile* was taken Prisoner, whereas the said *Mat: Paris* lived a long time afterwards, for he dyed in the year 1259. which was 117 years after that time ; secondy, because what *Caradoc* says concerning the said *Geffrey* in his said 197 page, is very true, whose words are these :

**A**T that time, (viz. 1142.) King Steven took Geffrey Mandevile Prisoner at St. Albon, where the Earl of Arundel was like to be drowned by default of his Horse ; The Earl Mandevile gave to the King for his liberty, the Tower of London, with the Castles of Walden and Plassey, who afterward lived by spoil of Abbeys, and was slain in a skirmish against the King.

Now that *Caradoc* doth not mistake herein, will thus appear, If you look in *Henry of Huntington*, (who lived in the time of the said King *Stephen*) pag. 393. line 15. you may thus read :

<sup>54</sup> **E**odem anno cepit Rex Gaufridum de Magnavilla in Curia sua apud sanctum Albanum magis secundum retributionem nequitiae consulis, quam secundum jus gentium, magis ex necessitate quam ex honestate; Nisi enim hoc egisset, perfidia consulis illius regno privatus fuisset; Igitur ut Rex eum liberaret, reddidit ei Turrim Londonie & Castellum de Waledene & illud de Plaisfeiz, possessionibus igitur carens consul praedictus invasit Abbatiam Ramesiensem & Monachis expulsis raptore immisit, & Ecclesiam Dei speluncam latronum.

(Page 54.)

Also if you peruse the History of *Simeon Dunelmensis* (who lived in the time of the said King *Steven*, and whose History was continued for about 25 years by *John Prior of Hagulsted*) col. 273. line 15. you may thus read : *Galfridus enim de Magnavilla ejecitis Monachis Monasterio de Ramesbi abusus est vice Castris.*

Also *Roger Hoveden* (who lived in the times of King *Henry 2.* R. 1. and King *John*, in his Annals printed at *Frankfurt*, 1601. pag. 488. l. 41.) thus says :

<sup>55</sup> **A**nno autem ipso consul Gaufridus de Mandevilla Regem validissime vexavit, & in omnibus valde gloriosus effulgit; Mense autem Augusti miraculum justicia sua dignum virtus divina monstravit; Duos namque qui monachis evulsis Ecclesias Dei converterant in Castella, similiter peccantes simili pena multatavit; Robertus namque Marmiun vir bellicofus hoc in Ecclesia de Coventree perversus exegerat; Porro Gaufridus ut diximus in Ecclesia Ramesiensi scelus idem patraverat.

(Page 55.)

And a little before in the said page, he also tells how the said *Geffrey* was taken Prisoner at St. *Albon*, and delivered the Tower

of *London*, and the Castles of *Wallinden* and *Passeis* to the then King.

Also *Gulielmus Nubrigensis* (who lived in the times of *R. I.* and King *John*) thus writes, *lib. I. cap. xi.*

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**E**odem tempore Rex Stephanus cepit Gaufridum de Magnavilla in curia sua apud Sanctum Albanum: non quidem honeste & secundum jus pro merito ejus: & metu scilicet, quod expediret, quam quod <sup>56</sup>deceret plus attendens. Erat enim idem Gausfridus homo Audacissimus, & magnarum virium, simul & Artium: præclaram illam Arcem Lundonensem cum duabus aliis Munitionibus non ignobilibus possidens, & subtili astutia ingentia moliens.

And afterwards in the same Chapter he speaks how the King did wrest from the said *Geffrey* the Tower of *London*, with his two other Castles, and also what the said *Geffrey* did to the Monastery of *Ramesey*.

Also *Raph de Diceto*, who was Dean of *Pauls* in King *John's* time, in his *Abbrev: Chronic:* col. 508. line 32. thus says:

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**S**tephanus Rex Gaufridum de Magnivilla cepit in Curia sua, qui ut liberaretur, reddidit turrim Lundoniæ & Castella sua.

Also *Gervasius* a Benedictine Monk of *Canterbury* (who lived in the time of King *John*, col. 1360. line 7.) thus writes: M CX LIII.

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**R**ex Stephanus cepit Comitem Gaufridum de Mandavilla in Curia sua apud sanctum Albanum, magis ex necessitate, quam ex honestate, Nisi enim hoc fecisset, ut a pluribus dicebatur, perfidia Comitis regno privandus esset. Captus itaque Comes nulla potuit occasione liberari, nisi sua Castella resignans regiae pareret voluntati. Reddidit ergo Turrim Londoniæ & Castellum de Wal-

dene & illud de Plessiz & liberatus est. Comes igitur munitionibus carens, & a Militari crudelitate se cohibere non valens; invasit abbatiam de Ramefcia, & de Ecclesia Dei non veritus Iustitiam, speluncam fecit Latronum.

Also *John Brompton* col. 1033. l. 1.

**E**odem anno Comes Galfridus de Mandavilla a Rege captus pro restituzione turris Londoniensis & Castelli de Walde postea liberatur, qui possessionibus carens, cum adhuc magnam haberet familiam confessim abbathiam Sancti Benedicti de Rameseye invasit & Monachis expulsis raptore immisit, & sanctum Monasterium speluncam fecit latronum.

58 But I shall, after all this, shew you what *Mat: Paris* himself says in that Edition put out by Dr. *Wats*, pag. 79. which is the same place which Sir *Peter* doth cite, whose words are these:

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**E**odem tempore Rex Stephanus cepit Willielmem de Mandevilla apud Sanctum Albanum unde reddidit Regi Turrim Londoniarum cum Castellis de Waldene & de Plessiz antequam a vinculis solveretur. Qui carens possessionibus paternis, invasit abbatiem Ramesensem, atque Monachis expulsis raptore immisit.

But on the other side of the Leaf, viz. pag. 80. l. 17. in the year 1143. he thus says:

**E**odem anno Robertus Marmimi vir bellicosus qui Monachos Coventrenses a suo Monasterio expulerat, & de Ecclesia illa Castellum fecerat, dum contra hostes decertaret, inter prædones suos, ante ipsum Monasterium, solus peremptus est, & excommunicatus morte depascitur sempiterna. Eodem vero tempore \* Gaufridus Consul de Mandavilla qui idem scelus patraverat in Monast<sup>rio</sup> \*Ramesensi ante ipsam Eccleiam inter Consortes suorum acies, a pedite quodam vilissimo solus

\* Note.

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\* Note.

*Sagitta percussus, occubuit interfectus, &c.* So that the Reader may plainly see, how deceitfully Sir *Peter* doth here deal; for finding him in *Mat: Paris* called *William de Mandevile* on one side of the Leaf, (through either the slip of *Mat: Paris's* Pen, or the Printer's negligence) he acquaints the Reader with that, but never tells him how he is on the other side of the Leaf called *Geffrey de Mandevile*. And that this was purposely done, may easily appear, because if *Mat: Paris* had called him *William* on both sides of the Leaf, yet *Caradocus*, who was then living, having called him *Geffrey*, Sir *Peter* should have consulted other Authors, to have seen which of them two had been in the right; but these ancient Authors being against him, it was a good way to let them alone.

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I shall therefore leave it to the Reader to judge, whether *Caradocus Llancaruan* be not to be believed concerning *Hugh Cyveliok's* taking of *Melyenith*, being the same was taken when he was living; as also whether it doth not certainly appear by that proof that *Hugh Cyveliok* was at the least 41 years old when he married *Bertred*, and by consequence in all probability imaginable had a former Wife, for which reason, (if the other proofs were laid aside) there is no just cause to suspect *Amicia* to be illegitimate, and with this I will conclude my *Answer* to his former Book.

In the *Latin Epistle* to the Judges, (which I suppose to be Sir *Peter's*, though he doth not vouchsafe to set his name thereto) he said I was the first Instigator of this Controversie; but whether that be so or not, let the Reader judge by what I have said in my Epistle before my *Defence of Amicia*, and in the second and third pages of my *Reply*. Also in the same Epistle, when he doth appeal to the Judges, he doth not put the question, Whether the Law was different in the time of *Glanvil* in this point of *free marriage* from what it is now? But he proposeth this Question, Whether or no in the time of *Glanvil*, by our ancient Law, it was lawful for any Man to give Land in *free marriage* with his Bastard Daughter, although the Law being now changed, the

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Law doth not at this day <sup>61</sup> permit a Gift in *frank marriage* with a Bastard Daughter? By which he proves himself to be very like the Gentleman he speaks of in the 14 pages of both his Books, *who would needs dispute about a Crofs, and the question must be——Whether the Crofs was a Crofs or no Crofs?* For if the Law be now clearly and certainly changed in this particular point of *frank marriage*, from what it was in the days of *Glanvil* (as he in his Question absolutely says it is) it is then as certain, that Lands might have been given in *free marriage* to those not of the blood in the time of *Glanvil*, as it is certain, that a Crofs is a Crofs; (but this point must be otherwayes proved than by such a frivolous question as this is.)

He also in the same Epistle, tells those Reverend Judges, how highly he prefers Divinity before other Studies; but if he had been so conversant therein, as he would have them to believe, it seems strange to me, that he hath not better learnt his duty to his deceased Grandmother; for we are bound to honour all our Parents, whether mediate or immediate; and whether they be living or dead: And I believe he will not find <sup>62</sup>any Precedent in Scripture, where any one did divulge the shame of any person, out of whose loyns he did descend, except that of wicked *Ham*, which pattern is in some respects exceeded by Sir *Peter*; for *Ham* did really find his Father naked: and when the other Sons of *Noah* had covered their Father with a Garment, he did not offer to reveal his Fathers nakedness again and again.

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As for his second Book, which he directs to all the Judges of *England*, it so falls out, that there is nothing therein, but what is in his former Books, and is already answer'd; though if there had, I should not have presumed to have given any Answer thereto; because those learned persons know well enough what the Law was, and is in all particulars, and cannot receive any information therein, either from Sir *Peter*, or me, or be deceived by his misrecitals in his said Books; However, I cannot but observe how lightly he speaks of the Lord *Coke* in his 48 page, and also how he hath such light expressions in his Book directed

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to the Judges, as I believe were never used before by any person of discretion, to such Reverend and Learned Men. No wonder therefore, if he speak <sup>63</sup>coarsely of me, and tell me of so many Impertinencies; but whether I be guilty of them, or of those untruths, or of that opprobrious language, which he doth charge me with, let the indifferent Reader be Judge. And whereas it doth appear, that he is resolved to have the last word, although he have nothing new to say; and that his Writing again be contrary both to his duty to his deceased Grandmother, and to his promise in Print: I do therefore declare, If what Sir *Peter* writes hereafter be no more to the purpose, than that is which he hath said in his two (last) Books, that I will not appear in Print against him any more, but will choose to vindicate my Grandmother and my self by word of mouth, whensoever I shall have any opportunity so to do; only let me now acquaint the judicious Reader, that some other Judges have declared their opinion concerning the *Legitimacy of Amicia*, besides those three who formerly did so, and who were spoken of by Sir *Peter*, in the 49 page of the latter of his two last Books.

*Baddeley, Febr. 15.*

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*T. M.*

F I N I S.



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